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ROMAN LAW IN THE MODERN WORLD

BY

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Third Edition

VOL. III

SUBJECT-GUIDES TO THE TEXTS OF ROMAN LAW, TO THE
MODERN CODES AND LEGAL LITERATURE;
INDEX TO VOLS. I-III

NEW YORK,
BAKER, VOORHIS & CO.,
1937

First Edition, 1917

Second Edition, 1922

Third Edition, 1937

4498

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Press of The Tuttle, Morehouse & Taylor Co., New Haven, Conn., U. S. A.

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LIST OF PRINCIPAL ABBREVIATIONS USED IN ROMAN LAW TREATISES

B., Bas. = Basilica of Leo VI.

C.; Cod.; Code = Code of Justinian. (Code, 8, 10, 6 is 8th book, 10th title, 6th law or constitution.)

C. Th.; Cod. Theod. = Code of Theodosius. (It is cited like the Code of Justinian.)

Collatio = Mosaicarum et Romanarum legum collatio.

Const. = Constitution; sometimes referring also to a prefatory constitution of the Code or Digest, e.g. Const. "Omnem."

D.; Dig.; Digest; P. = Digest or Pandects of Justinian. (Dig. 17, 1, 25 pr. is 17th book, 1st title, 25th fragment, principium or first paragraph.)

Frag. Vat. = Vatican Fragments.

G.; Gaius = Institutes of Gaius. (Gaius, 2, 1, is 2d book, 1st section.)

I.; Inst.; J. = Institutes of Justinian. (Inst. 2, 6, 10, is 2d book, 6th title, 10th section.)

I. = Constitution, law or fragment.

L. = Book. (Unless it is the numeral "50".)

N.; Nov.; Novel = Novels of Justinian. (Nov. 18, 3 is 18th novel, 3d chapter.)

Paul. Sent.; Sent. P. = Sententiae of Julius Paulus.

Pr.; pr. = Principium, the first paragraph and preliminary section of the Institutes, or of a fragment of a title of the Digest, or of a constitution or law of the Code.

SC. = Senatusconsultum or decree of the Senate.

Theophilus; Theoph. Inst. = Paraphrase of the Institutes of Justinian by Theophilus.

Ulpian Reg.; Reg. = Regulae of Domitius Ulpian.

XII Tab.; XII Tables = Law of the XII Tables.

§ = Section.

The latest modern Civilians or Romanists, including the author, cite the *Corpus Juris Civilis* from the stereotyped edition of Krueger, Mommsen, Schoell, and Kroll; and the Code of Theodosius from Mommsen's edition.

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WINCHESTER, *Roman jurisprudence*, 52 *Albany Law Journ.*, p. 171.

III. *See also* supra vol. i, §§ 34-53.

Praetorian and other Edicts: references.

§ 946

I. Texts of Roman law:—

DIG. 1, 13 *De officio praetorum* (Monro, English translation of Digest, vol. i, p. 49).

GAIUS, 1, 6, (among Eng. transl., Poste⁴).

INST. 1, 2, 7, (among Eng. transl., Moyle⁴).

THEOPHILUS, Inst., 1, 2, 7.

II. Texts of Edicts:—

BRUNS, *Fontes Juris*⁶, pp. 202-37.

GIRARD, *Textes de droit romain*³, pp. 131-68.

WALKER, *Edictum Julianum*, Cambridge, 1877.

III. Modern references:—

AUSTIN, *Jurisprudence*³, vol. ii, pp. 610-25 (Lecture 35).

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toire juridique off. à P. F. Girard, vol. i, pp. 1-42, Paris, 1913).

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TRUAX, *The Roman praetor and jus honorarium*, 15 Albany Law Journal, 136.

IV. See also *infra* § 947-949; *supra* vol. i, §§ 60-61.

Greek philosophy, especially Stoicism: references.

§ 947

I. Texts of Roman law:—

CODE, 4, 56 *Si mancipium ita venerit ne prostituatur.*

— 8, 51 (52) *De infantibus expositis*, etc.

COD. THEODOS. 5, 9 *De expositiis.*

DIG. 1, 3, *De legibus*, 2.

II. Modern references:—

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RAVENET, The spirit of the Roman law, 12 Green Bag, p. 598.

SALMOND, The law of nature, 11 Law Quart. Rev., p. 121.

SISSON, Can virtue be taught? 41 Educational Rev., p. 261.

III. **See also** supra vol. i, §§ 62-7.

§ 948 Jus respondendi and jurists of the Early Empire: references.

I. **Texts.** There is a restoration of the writings of all the jurists mentioned in Justinian's Digest made by:

LENEL, Palingenesia juris civilis, 2 vols., Leipzig, 1889.

The next important textual works are:

KRUEGER, MOMMSEN, and STUDEMUND, Collectio librorum juris ante-Justin-

iani, 3 vols., Berlin, 1878-1905. These may be had separately. Vol. i — Institutes of Gaius, 5th ed., 1905; vol. ii — Ulpian's Regulæ, Paulus' Sententiae; vol. iii — Alia minora, 1878.

GIRARD, Textes de droit romain³, Paris, 1903, contains among other things the text of Gaius' Institutes, Ulpian's Regulæ, and Paulus' Sententiae.¹

¹ KNIEP, Der Rechtsgelernte Gaius, etc., 1910-17 (text of Institutes with commentary).

HUSCHKE, *Jurisprudentiae ante-Justinianae*, 5th ed., 5 vols., 1886.

BREMER, *Jurisprudentiae ante-Hadrianae*, vol. ii, Leipzig, 1898.

BRUNS, *Fontes juris*⁶, pars posterior, contains texts of Roman writers, not jurists, on legal subjects.

II. Translations of texts.

Extracts from the works of the jurists contained in the Digest of Justinian will, of course, be found translated (1) in the French translation of the *Corpus Juris Civilis* (*Institutes*, *Code*, *Digest*, *Novels*), 16 vols. quarto, Paris, 1806–10; (2) in the German translation of the same, Leipzig, 1830–33; (3) in the English translation of the Digest, books 1–15 inclusive, Monro, Cambridge, 1904–9.

(a) English translations of Gaius' *Institutes*:

ABDY and WALKER, 3d ed., Cambridge, 1885.

CROSS (scattered throughout Hunter's Roman law⁴ — see, however, pp. 1113–18).

MEARS, *Institutes of Gaius and Justinian*, London, 1882.

MUIRHEAD, Edinburgh, 1895. (§ 948)

POSTE, 4th ed., Oxford, 1904
(the standard work).

TOMKINS and LEMON, London, 1869.

(b) French translations of Paulus' *Sententiae*:

DAUBANTON (French translation of the *Corpus Juris Civilis*, see *supra*), *Le trésor*.

(c) English translations of Ulpian's *Regulae*:

ABDY and WALKER, *Commentaries of Gaius and Rules of Ulpian*³, London, 1885.

MUIRHEAD, *Institutes of Gaius and Rules of Ulpian*, Edinburgh, 1895.

III. Roman law citations.

COD. THEODOS. 1, 4 *De responsis prudentium*.

DIG. 50, 17 *De diversis regulis juris antiqui*.

GAIUS 1, 7 (among Eng. transl., Poste⁴).

INST. 1, 2, 8 (among Eng. transl., Moyle⁴).

THEOPH. 1, 2, 8.

IV. Modern references.

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(§948) AUSTIN, *Jurisprudence*³, vol. ii, pp. 567-94 (Lectures 31-4).

BALOG, *Skizzen aus der römischen Rechtsgeschichte* (in *Études d'histoire juridique* off. à P. F. Girard, vol. ii, pp. 337-540, Paris, 1913).

BRYCE, *Studies in history and jurisprudence*, pp. 607-37, 676-86, New York, 1901.

BUHL, *Salvius Julianus*, Heidelberg, 1886.

CAMMELLI, *Le due scuole dei giureconsulti romani*, Florence, 1898.

CARLYLE, *Medieval political theory*, vol. i, pp. 19-61, London, 1903.

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CLARK, *Roman private law-sources*, pp. 107-44, Cambridge, 1906.

ESMEIN, *Fragments du livre ix des *Responsa Papiniani* avec les notes de Paul et d'Ulpian* (in *Mélanges*, pp. 339-58, Paris, 1886).

FINK, *Roman equity*, 1 *Law Mag.* and *Rev.*, p. 667.

GIRARD, *Manuel de droit romain*⁴, pp. 62-70.

GLASSON, *Étude sur Gaius*, 1 *Law Quart. Rev.*, p. 508.

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Continental Legal History Series, Boston, 1914).

HUNTER, *Roman law*⁴, pp. 65-85.

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MAY, *Sur quelques exemples de gémination juridique dans les auteurs littéraires latins* (in *Mélanges Gérardin*, 1907, pp. 399-412).

MUIRHEAD, *Roman law*², pp. 291-3, 296-314.

REICH, *Graeco-Roman institutions*, 7 *Law Quart. Rev.* 86.

ROBY, *Introduction to the Digest*, ch. ix-xv, pp. cxxiv-ccviii, Cambridge, 1886.

SALMOND, Law of nature, 11
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Roman law, 30 Law mag.
and Rev., p. 150.

— Interpretation in Roman
law, 15 Law Mag. and
Rev., p. 223.

— Legal etymology, 28 Law
Mag. and Rev., p. 257.

WINCHESTER, Roman juris-
prudence, 52 Albany Law
Jour., p. 171.

V. See also supra vol. i,
§§68-110.

Roman law of the Early Empire: references.

§ 949

I. Texts of Roman law:—

— **Leges, Edictum Hadrian.,
Responsa, SC.**

See §§ 67 and 118, also

BREMER, *Jurisprudentia ante-
Hadriana*, vol. ii, "Empire,"
Leipzig, 1896-1901.

BRUNS, *Fontes juris*⁶, pp.
160-202 (SC.).

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main*³, pp. 103-472.

— Other Roman law cita- tions.

(a) **Ante-Justinian:**

GAIUS, 1, 4 and 5 (among Eng.
transl., Poste⁴).

COD. THEOD. 1, titles 1, 2
and 3. These treat of con-
stitutiones, edicta, rescripta,
and mandata principum.

— 1, 6 *De officio praefecti
urbis*.

(b) **Justinian:**

INST. 1, 2, *De jure*, etc., 5-
6 (among Eng. transl.,
Moyle⁴).

DIG. 1, titles 4, 9-10, 12-18

(Monro, Eng. transl. of
Digest, vol. i, pp. 23-4,
42-61). These treat of
constitutiones principum;
the office of senator, consul,
praefectus urbi, quaestor,
praetor, praefectus vigilum,
proconsul, legatus, praefec-
tus Augustalis, and praeses.

CODE, 1, titles 14-16, 23, 28,
35. These treat of leges;
constitutiones, edicta, and
mandata principum; sena-
tusconsulta; the office of
praefectus urbi, proconsul,
legatus.

— 5, 8, *Si nuptiae ex re-
scripto, etc.*,

— 12, 63 (64) . . . *Insin-
uatores constitutionum, etc.*

Nov. 17 *De mandatis prin-
cipum.*

(c) **Post-Justinian:**

THEOPH. 1, 2 *De jure*, etc.,
5-7.

HEXABIBLOS, 1, 1 *De legibus*,
1-4.

II. Modern references:—

ALLEN, *Enquiry into rise and progress of royal prerogative* (1831).

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BUSSELL, *The Roman Empire — constitutional history*, vol. i, pp. 1–88, London, 1910.

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GIRARD, *Manuel de droit romain*⁵, pp. 47–70.

HUNTER, *Roman law*⁴, pp. 65–85.

KRUEGER, *Quellen*, pp. 81–109.

MACKELDEY (Dropsie translator), *Roman law*¹⁴, §§ 40–55.

MACKENZIE, *Roman law*⁷, pp. 14–19.

MUIRHEAD, *Roman law*², pp. 279–350.

PETIT, *Traité de droit romain*⁷, §§ 38–44.

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TRAUX, *Senatusconsulta*, 14 *Albany Law Journ.*, 443.

TUCKER, *Life in the Roman world of Nero and St. Paul*, pp. 49–70, New York, 1910.

III. See also *infra* § 1021; *supra* vol. ii, §§ 873–907, “Constitutional and administrative law”; vol. i, §§ 111–15.

§ 950 Influence of Roman law on Christianity: references.

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DEISSMANN (Stracham translator), *Light from the ancient East*², London, 1911, (Index).

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See also *supra* vol. i, §§ 116–19.

Ante-Justinian codes and collections: references. §951

I. Texts of codes of statutes:—

— Gregorian and Hermogenian Codes:

K R U E G E R - M O M M S E N - STUDEMUND, *Collectio librorum juris ante-Justiniani*, vol. iii, Berlin, 1895. (The best edition.)

HAENEL, *Codices Theodosianus, Gregorianus, Hermogenianus*, 1842-44.

DAUBANTON, *Le trésor*, etc. (in French transl. of *Corpus Juris*, — see infra § 952).

— Theodosian Code:

M O M M S E N - M E Y E R , *Theodosiani libri xvi cum const. Sirmondian.*, 2 vols. in 3, Berlin, 1895. (The best edition.)

G O T H O F R E D U S , J., *Codex Theodosianus cum perpetuis commentariis* (ed. Ritter), 6 vols., Leipzig, 1736-41.

HAENEL, *Codices Theodosianus*, etc., 1842-44.

— Const. Sirmondian:

These are in vol. 1, part 2, of M O M M S E N - M E Y E R , *Theodosian Code*.

— Post-Theodosian Novels or the Novels of Theodosius II, Valentinian III,

Marcian, Marjorian, Leo and Severus, and Anthemiush:

These are in vol. 2, M O M M S E N - M E Y E R , *Theodosian Code*.

— Other works:

H A E N E L , *Corpus legum*, Leipzig, 1855. (For texts of Imperial statutes, prior to Justinian, not in Cod. Theod. or other codes).

H U S C H K E , *Jurisprudentiae ante-Justinianae*, 5th ed., 5 vol., 1886.

II. Texts of collections of jurisprudence:—

— Collatio Mosaic. et Rom. legum:

G I R A R D , *Textes de droit romain*³, pp. 543-77.

H Y A M S O N , *Coll. Mos. et Rom.*, London, 1913. (Text and Eng. transl.)

K R U E G E R - M O M M S E N - STUDEMUND, *Coll. lib. ante-Just.* vol. iii.

— Consultatio vet. cuij. jurisconsult.:

G I R A R D , *Textes*³, pp. 590-606.

K R U E G E R - M O M M S E N - STUDEMUND, *Collectio*, etc., vol. iii.

(§951) —— **Syrian-Roman Law book:**

BRUNS and SACHAU, *Syrisch-römisches Rechtsbuch aus dem fünften Jahrhundert*, Leipzig, 1880. (German translations of the various versions began to be published by SACHAU in 1907 at Berlin.)

— **Vatican Fragments:**

GIRARD, *Textes*³, pp. 482–542.
KRUEGER-MOMMSEN-

STUDEMUND, *Collectio*, etc., vol. iii.

III. Texts of *Leges Rom. Barbarorum*:—

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IV. Other Roman law citations:—

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V. Modern references:—

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Studies in Polit. Science, New York, 1905).

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HUNTER, *Roman law*⁴, pp. 85–9.

KRUEGER, *Quellen*, pp. 272–322.

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MOREY, *Roman law*, pp. 154–8.

MUIRHEAD, Roman law², pp. 352-75.

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VI. See also *infra* §§ 952, 956; *supra* vol. i, §§ 124-133.

Justinian Roman law: references.

§ 952

I. Text of Corpus Juris Civilis:¹—

The latest and best edition is:

MOMMSEN-KRUEGER-SCHOELL-KROLL, Corpus Juris Civilis, editio stereotypa, 3 vols., Berlin, 1880-1908: vol. i contains the "Institutiones" (Krueger) and "Digesta" (Mommsen), 15th edition, 1928; vol. ii, the "Codex Justinianus" (Krueger), 9th edition, 1928; vol. iii, the "Novellae," "Edicta Justiniani," and "Constitutiones dispersae" (Schoell and Kroll), 5th edition, 1928.

The following editions of parts of the Corpus Juris are deserving of special mention:

GIRARD, Textes de droit ro-

¹ For mode of citation, see *infra* Appendix I, pp. 317-20.

main³, pp. 607-764 (Institutes).

HAENEL, Juliani epitome latina novellarum, Leipzig, 1873.

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MOYLE, Imperatoris Justiniani Institutiones, 5th ed., Oxford, 1912 (also edited as a recension of Gaius).

II. Translations of the Corpus Juris Civilis:—

There are complete English, French and German translations of the Corpus Juris.

(§952) (a) French:

HULD T - DAUBANTON -
 TISSOT - BERENGER -
 BERTHELOT, *Les Institutes, le trésor de l'ancienne jurisprudence romaine, le Code, les Pandectes, les Nouvelles de Justinien* (there is no general title to the French translation of the *Corpus Juris*—each part bears a separate title), Metz or Paris, 1804-11. The French translation is of the Florentine and other MSS., prior to the labor of Mommsen and other 19th century editors of these MSS.

ORTOLAN, *Les Institutes de Justinien*⁸, 2 vols., Paris, 1870.

(b) German:

OTTO - SCHILLING -
 SINTENIS, *Corpus Juris Civilis*, 7 vols., Leipzig, 1830-33.

(c) English:¹

— **Institutes:** The latest translation of the *Institutes* is by MOYLE, *Institutes of Justinian*, 4th edition, Oxford, 1906. Other translations of the *Institutes* are: ABDY and WALKER, Cambridge, 1876.

COOPER, New York, 1841.

¹ SCOTT, *A translation of the Civil Law (complete English Translation of the Corpus Juris)*, 7 vols., Cincinnati, 1932.

CROSS (see pp. 1118-22 of Hunter, *Roman law*⁴, London, 1903).

CUMMIN, London, 1865.

GRAPEL, Cambridge, 1885.

HARRIS, London, 1761.

MEARS, *Institutes of Gaius and Justinian*, London, 1882.

SANDERS, London, 1853. (Virtually a translation of Ortolan's French translation.)

— **Digest:**

The three prefatory Constitutions to the Digest ("Deo auctore," "Omnem rei publicae," "Tanta") and books 1-15 inclusive, are translated by MONRO, *Digest of Justinian*, 2 vols., Cambridge, 1904-9. Fragmentary titles of books 16-50 of the Digest have been translated by the following:

DIG. 17, 1 *Mandati vel contra*, by WALKER, pp. 9-80, (1879).

— 18, 1 by MACKINTOSH in his "Roman law of sale," Edinburgh, 1907.

— 19, 1 by MACKINTOSH, *Id.*

— 19, 2 *Locati conducti*, by MONRO, pp. 1-75 (1891).

— 20 (all), by JACKSON, pp. 43-98 (1908).

— 39, 1, fr. 1 and 5, WARE, "Roman water law," 1905.

- 39, 2, fr. 24 and 30 by WARE, *Id.*
- 39, 3, fr. 1-26, by WARE, *Id.*
- 41, 1 *De adquirendo rerum dominio*, by WALKER.
- 41, 1, fr. 14-16, 29-30, 56 and 65 by WARE, *Id.*
- 41, 2 *De adq. vel amitt. poss.* by WALKER.
- 41, 2, fr. 13 by WARE, *Id.*
- 41, 10, fr. 2 by WARE, *Id.*
- 43, 8, fr. 2-5 by WARE, *Id.*
- 43, 10, fr. 1 by WARE, *Id.*
- 43, 12, fr. 1-4 by WARE, *Id.*
- 43, 13, fr. 1 by WARE, *Id.*
- 43, 14, fr. 1 by WARE, *Id.*
- 43, 15, fr. 1 by WARE, *Id.*
- 43, 20, fr. 1-8 by WARE, *Id.*
- 43, 21, fr. 1-4, by WARE, *Id.*
- 43, 22, fr. 1 by WARE, *Id.*
- 43, 23, fr. 1-2 by WARE, *Id.*
- 43, 24, fr. 11 by WARE, *Id.*
- 45, 1 *De verborum oblig.* by TRAPNELL, pp. 76-149 (1908).
- 47, 2 *De furtis*, by MONRO, pp. 1-115 (1893).
- KELLY, *Essentials of the Roman Civil Law*, being a selection of titles from the Pandects of Justinian translated into English, Chicago, 1904.

— **Code:** (\$952)

Fragmentary titles of the Code have been translated by the following:

CODE, 3, 34, 1, 2-7, 10 and 12 by WARE, *Id.*

— 3, 35, 1, 1-2 by WARE, *Id.*

— 11, 42, 1, 1-4 and 6-11, by WARE, *Id.*

— **Novels:**

These novels have been translated: Nov. 118 and 127, by MEARS, in his *Institutes of Gaius and Justinian*, London, 1882.

III. Roman law citations:—

For a comparison of the titles of the Theodosian and Justinian Code, showing how the latter borrowed from the former, see MommSEN-MEYER edition of Theodosian Code I, 1, pp. xiii et seq.

(a) **Justinian:**

INST. Prooemium (Preface)— among Eng. transl. MOYLE⁴.

DIG. Prefatory Constitutions

“Deo auctore” (also repeated in COD. 1, 17, 1), “Tanta” (repeated Cod. 1, 17, 2) — Eng. transl. by MONRO, *Digest*, vol. i, pp. xiii-xvii, xxv—xxxvi.

COD. Prefatory Constitutions “Haec quae necessario,”

(§952) "Summa rei publicae," "Cordi nobis" (in vol. ii, Mommsen, etc. edition of *Corpus Juris Civ.*).

CONST. DISPERSAE, 7 and 8 (in vol. iii, Mommsen, etc., edition of *Corpus Juris Civ.*, appendix ii to the Novels).

(b) **Post-Justinian:**

INST. THEOPH. Prooemium (preface).

IV. Modern references:—

A GENERAL SURVEY, etc. (vol. i, Continental Legal History Series, Boston, 1912), pp. 19–22.

AMOS, Roman civil law, pp. 96–102.

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— Le fragment 16, D., xii, 4 (in 36 Revue gén. du droit, pp. 481–543).

AUSTIN, Jurisprudence³, vol. ii, pp. 625–41 (lecture 36).

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BUSSELL, The Roman Empire—const. hist., vol. i, pp. 218–45, vol. ii, pp. 33–6, London, 1910.

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ECKERT, Chrestomathie, Heidelberg, 1853.

GIBBON, Decline and fall of the Roman Empire, ch. 44.

GIRARD, Manuel de droit romain⁵, pp. 77–82.

GRADENWITZ, Interpolationen in den Pandekten, Berlin, 1887.

GREENE, Roman law⁴, pp. 13–15.

GUIZOT, History of civilization in France, lecture 11.

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V. See also *infra* § 956; *supra* vol. i, §§ 134-43.

§ 953 Influence of Christianity on Roman law: references.

I. Texts of Roman law:—

(a) **Ante-Justinian:**

COD. THEOD. 1, 27 De episcopali ordinatione.

— 5, 9 De expositis.

— 5, 10 De . . . sanguinolentos emptos, etc.

— 9, 45 De his qui ad ecclesias confugiunt.

— 16, 1 De fide catholica.

— 16, 2 De episcopis, eccles. et clericis.

— 16, 3, De monachis.

— 16, 4, De . . . super religione contendunt.

— 16, 5 De haereticis.

— 16, 6, Ne sanctum baptisma iteretur.

— 16, 7 De apostatis.

— 16, 8 De Judaeis, caelicolis et Samaritanis.

— 16, 9 Ne Christianum mancipium Judaeus habeat.

— 16, 10 De paganis . . . et templis.

— 16, 11 De religione.

CONST. SIRMONDIAN. (Appendix Mommsen-Meyer edition Theodosian Code, 1, 2, pp. 907 et seq.), 1-16.

Nov. THEOD. 3 De Judaeis, Samaritanis, haereticis et paganis (Mommsen-Meyer, Id. vol. 2, pp. 7-11).

Nov. VALENTINIAN. 17 De episcopis ordinatione (2

Mommsen-Meyer, Id., pp. 101-3).

— 18 De Manichaeis (2 Mommsen-Meyer, Id., pp. 103-5).

— 35 De episcopali judicio, etc. (2 Mommsen-Meyer, Id., pp. 142-52).

Nov. MARJORIAN, 11 De episcopali judicio, etc. (2 Mommsen-Meyer, Id., pp. 176-8).

Nov. MARCIAN, 5 De testament clericorum (2 Mommsen-Meyer, Id., pp. 193-6).

(b) **Justinian:**

COD. 1, 1 De . . . trinitate et de fide catholica.

— 1, 2 De . . . ecclesiis, etc.

— 1, 3 De episcopis et clericis et orphanotrophis, etc.

— 1, 4 De episcopali audiencia, etc.

— 1, 5 De haereticis et Manichaeis et Samaritanis.

— 1, 6 Ne sancta baptisma iteretur.

— 1, 7 De apostatis.

— 1, 8 Nemini licere signum salvatoris Christi . . . vel in marmore aut sculpere aut pingere.

— 1, 9 De Judaeis et caelicolis.

- 1, 10 Ne Christianum mancipium haereticus vel paganus vel Judaeus habeat etc.
- 1, 11 De paganis . . . et templis.
- 1, 12 De his qui ad ecclesias confugiunt, etc.
- 1, 13 De his qui in ecclesiis manumittuntur.
- 4, 56 Si mancipium ita venerit, ne prostituatur.
- 8, 51 (52) De infantibus expositis et de his qui sanguinolentos emptos nutriendos acceperunt.
- 9, 17 De his qui parentes vel liberos occiderunt.
- 11, 44 (43) De gladiatoriibus penitus tollendis.
- Nov. 3 Ut determinatus sit numerus clericorum sanctissimae majoris ecclesiae . . . Constantinop., etc.
- 5 De monachis.
- 6 Quomodo oporteat episcopos et reliq. cleric. ad ordinationem deduci, etc.
- 7 De non alienandis . . . eccles. rebus, etc.
- 9 Ut ecclesia Romana centum annorum habeat praescriptionem.
- 11 De privilegiis archiepiscopi primae Justinianae.
- 16 De mensura ordinand. cleric.
- 37 De Africana ecclesia.
- 40 Ut ecclesia sanctae (§953) resurrectionis possit alienare habitacula, etc.
- 42 De depositione Anthonimi, etc.
- 45 Ut haeretici, etc.
- 46 De ecclesiast. immobil. rerum alienatione, etc.
- 56 Ut ea quae vocantur insinuativa super clericis, etc.
- 57 Ut clerici, etc.
- 58 Ut in privatis domibus sacra mysteria non fiant.
- 65 De alienatione rer. ecclesiae Mysiae relict. pro captivorum redemtione, etc.
- 67 Ut nullus fabricet oratorii domum praeter voluntatem episcopi, etc.
- 76 De his qui ingrediuntur in monasterium, etc.
- 77 Ut non luxurietur contra naturam neque juretur, etc.
- 79 Apud quos oporteat causam dicere monachos et ascetrias.
- 81 Const. quae dignitatibus et episcopatu liberat filium patria potestate.
- 83 Ut clerici apud . . . episcopos primum conveniantur et post haec apud civiles judices.
- 86 Ut differentes judices audire interpellantium al-

(§953) legationes cognatur ab epis-
copis, etc.

— 109 De privilegiis dotis
haereticis mulieribus non
praestandis.

— 123 De sanctissimis et
... episcopis et clericis et
monachis.

— 129 De Samaritis.

— 131 De ecclesiasticis
titulis.

— 132 De interdictis col-
lectis haereticorum.

— 133 Quomodo oportet
monachos vivere.

— 137 De creatione epis-
coporum et clericorum.

— 144 De Samaritis.

EDICTA (appendix i to vol. iii,
Mommsen-Krueger, etc.,
Corpus Juris Civilis), 2,
Ne praesides in fiscalibus
asyli jus.

CONST. DISPERSAE (appen-
dix ii to vol. iii, Id.), 2-3.

(c) **Post-Justinian:**

PROCHIRON, 28 De ordina-
tione episcoporum et pres-
bytorum.

EPANAGOGA, 3 De patriar-
cha.

— 8 De episcopo ... ordi-
natione et nominatione.

— 9 De episcopis et presby-
teris, etc.

BASILICA, 1, 1 De summa
trinitate et fide catholica.

— 3, 1 De episcopis et
clericis et ordinatione et
privilegiis eorum.

— 3, 2 De numero cleri-
corum magnae ecclesiae
Constantinop., etc.

— 3, 3 De clericis ex una
ecclesia in alteram trans-
ferendis, etc.

— 3, 4, De clericis, qui a
sua ecclesia discedunt, etc.

— 4, 1 De monasteriis, etc.

— 5, 1 De ecclesiis et mon-
asteriis, etc.

— 5, 2 De alienatione ...
rer. ecclesiast.

— 5, 3 De ecclesiasticis
canonibus et privilegiis
eorum.

— 6, 22 Ut praesides in-
terpellantis jura audire
cunctantes ab episcopis,
etc.

— 19, 17 De ancilla ita
vendita, ne prostituatur.

— 31, 5 Const. quae per
dignitates et episcopatum
filios patria potestate libe-
rat.

— 33, 2 De infantibus ex-
positis ... et de his qui
sanguinolentos emerunt,
etc.

— 60, 50 De quaestione.

— 60, 58 De raptore vir-
ginum vel viduarum nec
non sanctimonialium.

HEXABIBLOS (Preface of
Harmenopoulos), Judicum
praeparatio sive justitia,

- 2, 5 *De muneribus*, etc.
- 2, 9 *De iis qui confugium querunt.*
- 4, 5 *De civili matrimonii rigore.*
- 5, 4 *De testamento episcoporum et monachorum.*
- 6, 11 *De Judaeis, pagani-zantibus et haereticis.*
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- GIBBONS, *Decline and fall of the Roman empire*, ch. 20.
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III. *See also* infra § 1026; supra vol. i, §§ 144-53.

§ 954 Roman law schools and legal education: references.

I. **Texts of Roman law:**—

(a) **Ante-Justinian:**

COD. THEOD. 6, 21 De professoribus, etc.

— 13, 3 De medicis et professoribus.

— 14, 9 De studiis liberalibus urbis Romae et Constantinop.

(b) **Justinian:**

CODE, 2, 7 De advocatis divers. judiciorum.

— 10, 50 (49) Qui aetate se excusent, 1.

— 10, 53 (52) De professoribus et medicis.

— 11, 19 (18) De studiis liberalibus urbis Romae et Constantinop.

— 11, 22 (21) De metropoli Beryto.

CONST. *Omnem* (one of the prefaces to the DIGEST—Eng. transl. by Monro,

“Digest,” vol. i, pp. xviii-xxiv, and also by Ortolan “History of Roman law,” § 573).

(c) **Post-Justinian:**

BAS. 6, 26 De archiatris et professoribus, etc.

— 8, 1 De postulando (especially fr. 26).

— 54, 2 . . . De his, qui studiorum causa in aliena civitate degunt.

II. **Modern references:**—

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GIRARD, *L'enseignement du droit romain* (in *Nouvelle revue historique de droit français et étranger*, Sept.-Oct. 1912); also, *The teaching of Roman law*, 13 *Journal of Comparative Legisl.* N. S., part 2, p. 171 (no. 28, July, 1913).

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THE shortcomings of the case method, 25 Green Bag, p. 467.

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III. See also *infra* §§ 1019, 1024; *supra* vol. i, §§ 154-65; vol. ii, § 906.

Post-Justinian Roman law: references.

§ 955

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(a) *Theophilus' Institutes*:

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WUSTERMANN (German transl. of *Theophilus' Inst.*), 1823.

¹ FREGIER, *Paraphrase des Instituts de Justinien par Théophile* (French transl. of *Theophilus' Inst.*), Paris, 1847.

(b) *Ecloga*:

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— *Prochiron* (Prolegomena, ch. 2), Heidelberg, 1837. (Contains Latin transl. of preface of *Ecloga* and a Latin list of its titles.)

(c) *Prochiron*:

ZACHARIAE, etc., *Imperatorum Basilii, Constantini et Leonis Prochiron*, Heidel-

— Kritisch. Jahrbuch für deutsch. Rechtswissenschaft, 1844, p. 794; 1847, p. 581.

— Geschichte des griechisch-römisch. Rechts³, Berlin,

1892. (French translation of the same, Hist. du droit privé gréco-romain, by LAUTH, 1870.)

IV. See also infra §956; supra vol. i, §§ 166–83.

§ 956 Roman law of the Later Empire: references.

I. Texts of Roman law:—

(a) Ante-Justinian:

COD. THEOD. 1, titles 5, 8–11, 13, 15–17, 28. These treat of the office of praefectus praetorio, quaestor, magister officiorum, comes sacrarum largitionum, comes rei privatae, comes Orientis, vicarius, rector, defensor, senatus.

— 6, titles 2–9, 16, 19–20, 22, 37–8. These treat of the office or dignity of senator, praetor, quaestor, consul, praefectus, magister militum, patricius, praefectus urbi or praetorio, praepositus sacri cubiculi, magister officiorum, comes sacrarum largitionum, comes rei privatae, comes sacri palatii, consularis, praeses, eques, perfectissimus.

— 15, 4 De imaginibus imperialibus.

Nov. VALENTINIAN. 11 De honoratis, etc. (Mommsen—

Meyer edition of Cod. Theod., vol. ii, p. 93).

— 22, De officio praefect. praetorio. (2 Mommsen-Meyer, Cod. Theod., p. 113.)

(b) Justinian:

CODE, 1, titles 26–7, 29–34, 36–42, 44. These treat of the office of praefectus praetorio, magister militum, quaestor, magister officiorum, comes sacrarum largitionum, comes rei privatae, comes sacri matrimonii, comes Orientis, praefectus Augustalis, vicarius, praetor, rector, praefectus annonae.

— 3, 24 Ubi senatores vel clarissimi, etc.

— 11, 9 (8) De vestibus . . . auratis, etc.

— 11, 20 (19) De honoratorum vehiculo.

— 11, 21 (20) De privilegiis urbis Constantinop.

— 11, 66 (65) De fundis rei privatae . . . divinae domus.

— 11, 67 (66) *De fundis . . . rei domenicae.*

— 12, titles 1–6, 8–10, 12–13, 31 (32), 52 (53), 53 (54).

These treat of the office or dignity of *praetor*, *consul*, *praefectus*, *magister militum*, *patricius*, *praefectus praetorio*, *praepositus sacri cubiculi*, *quaestor*, *magister officiorum*, *comes sacrarum largitionum*, *magister scriniorum*, *comes consistorianus*, *comes rei militaris*, *comes provinciae*, *equestrian*, *apparitores praefectus praetorio* or *praefectus urbi*.

NOVELS 13, 24–30, 31, 62, 71, 102, 103–5. These treat of the office or dignity of *praetor*, *comes*, *moderator*, *proconsul*, *praeses*, *senator*, *illustris*, *clarissimus*, *consul*.

— 134 *Ut nulli judicum licet habere loci servitorum.*

(c) **Post-Justinian:**

EPANAGOGA, titles 2, 4–6. These treat of the office of emperor, *praefectus urbi*,

Abyssinia: references.

ADENEY, Greek and Eastern churches, pp. 296, 615, New York, 1908.

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quaestor, and other magistrates.

BAS. 2, 5 *De precibus imperatori*, etc.

— 2, 6 *De principibus et . . . constitutionibus*, et *rescriptis*, etc.

— 6, titles 2–6, 8–19, 21, 23, 25–31, 33–4. These treat of the office or dignity of *consul*, *proconsul*, *legatus*, *praeses*, *praefectus urbi*, *praefectus praetorio*, *praefectus vigilum*, *praetor plebis*, *quaestor*, *praetor*, *comes*, *moderator*, *defensor*, *vicarius*, *procuator*, *rationalis*, *logotheta*, *praepositus sacri cubiculi*, *notarii*, *archiatri*, *professor*, *domesticus sacrarum scriniorum*, *protector*, *agens*, *curator cursus*, *palatinus*, *decanus*, *mensor*, *eques*.

HEXABIBLOS, Appendix, title 1 *De dignitatibus.*

II. See also supra §§ 951, 952, 955; infra § 1021; supra vol. i, §§ 120–23, 184; vol. ii, §§ 873–907.

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SEE also supra vol. i, § 186.¹

§ 958 Mohammedan countries: references.

(a) In general:

ABDUL MAJID, A historical study of Mohammedan law, 27 Law Quart. Rev., p. 28, 28 Law Quart. Rev., p. 355.

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SEE also infra (a)-(g); supra vol. i, §§ 187-92.

¹ Especially footnotes,⁴ pp. 177-178 of vol. i.

(b) Turkey:

I. Codes, etc., and translations:—

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¹ BISHOP, Reform in the Turkish Judicial system, 12 American Bar Assn. Journal, p. 248.

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— SEE also supra vol. i, pp. 182–3, footnotes 36 A and 42.

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III. See also supra "Mohammedan law, in general."

(c) Cyprus:

I. Codes, etc., and translations:—

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(§ 958) HUTCHINSON and FISHER, Statute law of Cyprus, 1878-1906, London, 1906.

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III. See also supra (a) and (b).

(d) Egypt:

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ARMINJON, Le code civil et l'Égypte (in Le code civil—livre du centenaire, 1804-1904, vol. ii, pp. 735-62).¹

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¹ BRINTON, The mixed courts of Egypt, New Haven, 1930.

² SEE also supra vol. i, p. 184, footnote 50 A: Id., p. 185, footnote 57 A.

world, "Egypt," London, 1911 et seq.

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SEE also supra (a) and (b).²

(e) India:

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SEE also supra (a); vol. i, § 269, last note.

(f) Philippine Islands:

MCCLINTOCK, *Mohammedan law in our Philippine possessions*, 21 Green Bag, p. 319.

(g) Algeria:

BERG, *Principes du droit musulman*, Algiers, 1896.

Malta: references.

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III. See also *supra* §§ 963, 967, 977; vol. i, §§ 361-412.

CHAPTER II

SUBJECT-GUIDE TO VOL. II:

LISTS OF THE PERTINENT TEXTS OF ROMAN LAW AND OF THE PRINCIPAL MODERN CODES; REFERENCES TO PERTINENT MODERN LEGAL LITERATURE

Periods, terms, and general principles of Roman law: refer- § 983 ences.

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) Ante-Justinian:

XII TABLES, 1, 1; ix, 6; xii, 5. GAIUS, 1, 1-8.

ULPIAN, Reg. 1, 1-4.

COD. THEOD. 1, 1 De constitution. principum, etc.

— 1, 2 De . . . rescriptis.

— 1, 3 De mandatis principum.

— 1, 4 De responsis prudent.

— 5, 20 De longa consuetud.

Nov. VALENTIN. 4 In . . . rescriptum, etc.

(b) Justinian:

INST. 1, 1, De justitia, etc.

— 1, 2 De jure natural., etc.

DIG. 1, 1 De justitia, etc.

— 1, 3 De legibus, etc.

— 1, 4 De const. principum.

— 1, 5 De statu.

— 22, 6 De juris et facti ignorantia.

— 50, 16 De verb. signif.

— 50, 17 De . . . regulis, etc.

CODE, 1 14 De legibus et const. principum, etc.

— 1, 15 De mandatis principum, etc.

— 1, 16 De senatusconsult.

— 1, 18 De juris et facti ignorantia.

— 1, 23 De . . . rescript. et pragmat. sanction.

— 6, 38 De verb. . . signif.

— 8, 52 (53) . . . Longa consuetud.

Nov. 17 De mandatis principum.

(§983) —— 131 *De ecclesiastic.*, etc.

(c) **Post-Justinian:**

THEOPHILUS, 1, 1 *De iustitia*, etc.

—— 1, 2 *De jure naturale*, etc.

EPANAGOGA, 1 *De jure et just.*

BAS. 2, 1 *De just. et jure et longa consuetud.*

—— 2, 2 *De verb. signif.*

—— 2, 3 *De . . . regulis*, etc.

—— 2, 4 *De facti et juris ignorantia.*

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(a) **In general:**

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ARGENTINA, 1–22.

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SPAIN, 1–16.

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(b) **Modern codes:**

References are to the Civil Code, unless otherwise stated.

III. See also supra §§946–51, 955; vol. i, §§ 29–51, 53–133, 135–9, 166–84, 189, 194–5; vol. ii, §§ 413–27.

Freedom and slavery: references.

§ 984

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, v. 8–11; vi, 6. GAIUS, 1, §§ 9–54, 82–92; 3, §§ 39–76.

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CONST. SIRMONDIAN, 5.

NOV. ANTHEMIUS, 1.

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(b) **Justinian:**

INST. i, 3–8; iii, 7–8, 11, 17.

DIG. i, 5–6; xi, 1–2; xv, 1–4; xxv, 3; xxxviii, 1–5; xl, 1–16; xlvi, 29, 31, 32; xlv, 3; xlvii, 4; xlviii, 15.

(§ 984) **CODE**, i, 13, 25; ii, 30 (31); iii, 22, 42; iv, 13, 14, 26, 27, 36, 42, 55-8; vi, 1-8; vii, 1-24; viii, 8, 51, (52); ix, 11, 14, 20, 21; x, 33 (32), 58 (56); xi, 41 (40), 63 (62), 64 (63), 68 (67); xii, 33 (34).
Nov. 32-4, 78.

(c) **Post-Justinian:**

THEOPHILUS, i, 3-8; iii, 7-8, 11, 17.
ECLOGA, 8.
PROCHIRON, 23 and 34.
EPANAGOGA, 37.
BAS. vii, 15; x, 13; xvi, 7; xviii, 1-3, 5-8; xix, 7, 17; xxiv, 4, 5; xxxi, 1, 2, 6; xxxiii, 2; xxxiv, 2; xxxv, 13, 16; xl, 7; xliii, 3; xliv, 6, 11; xlvi, 1; xlviii, 1-26; xlix, 1-6; lv, 11; lx, 6, 7, 13, 47, 48, 59.
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Citizenship: references.

§ 985

I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) Ante-Justinian:

XII TABLES, vi, 5.
LEX Antonia, etc.,
— municipii Tarentini,
— Julia municipalis,
— Rubria de Gallia Cisalpina: all four leges are translated by HARDY, *Six Roman laws*, Oxford, 1911.
GAIUS, 1, §§ 18, 28-35, 65-81, 88-96, 160.

PAULUS, *Sent.* i, 1a, 9-30; v, 30b.

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COD. THEOD. iv, 23; v, 17-19; xi, 24; xii, 19; xiii, 3-9; xiv, 10, 12, 13, 15.

Nov. MARJORIAN. 8.

— VALENTINIAN. 9-11, 31

(b) Justinian:

INST. 1, 5, § 3.

DIG. 50, titles 1, 4-6.

CODE, vii, 5-6; x, 17, 18, 38 (37)-40 (39), 43 (42), 48 (47)-57 (56), 60 (58), 64 (62)-73 (71); xi, 22 (21), 47 (46)-54 (53), 56 (55), 58 (56), 63 (62), 64 (63), 68 (67), 69 (68).

Nov. 156, 157, 160.

CONST. DISPERSAE (in appendix to Nov.) 1, 6, 9.

(c) Post-Justinian:

THEOPHILUS, 1, 5, § 3.

BAS. xlvi, 2; liv, 1-7, 34; lv, 1-5, 7-9, 11-13; lx, 19.

HEXABIBLOS, i, 13; ii, 5, 7; vi, 8; *Leges agrariae*, 1-3.

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MOREY, *Roman law*, pp. 47-58.

MOYLE, *Inst. of Justinian*, vol. i, 5th ed., pp. 26, 116-18.

PETIT, *Traité de droit romain*⁷, §§ 66-77.

POSTE, *Gaius*⁴, pp. 28, 31, 60, 93-7, 296, 305, 308.

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SOHM (Ledlie³), *Roman law*, pp. 110, 173-6, 178, 180.

WALTER, *Geschichte des röm. Rechts*, i, §§ 99-270.

III. *See also* supra § 984, infra § 987; supra vol. i, § 58; vol. ii, §§ 432, 437-44, 452-3.

§ 986 Emancipation, majority, *venia aetatis*, and in *integrum restitutio*: references.

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) *Ante-Justinian*:

GAIUS, 1, §§ 129-32.

PAULUS, *Sent.* 1, 7 *De integrum restitutio*.

— 1, 9 *De minoribus xxv ann.*

— 1, 9a (on in *integrum restit.*).

ULP. *Reg.* 10 *Qui in potestate . . . liberentur.*

EMANCIPATION, MAJORITY, AND MINORITY 89

COD. GREGORIAN. 2 Si adv. donationes . . . in integrum restit. — 2, 43 (44) Si saepius in (§ 986) integrum restitutio postuletur.

— 3 Si major, etc. — 2, 44 (45) De his qui veniam aetatis impetraverrunt.

COD. THEOD. 2, 16 De integri restitutione. — 2, 45 (46) Si major factus ratum habuerit.

— 2, 17 De his qui veniam aetatis impetrarunt. — 2, titles 46(47)–52(53) relate to in integrum restitutio.

— 3, 32 De praediis minorum, etc. — 2, 53 (54) Quibus ex causis maiores in integr. restitutio.

— 8, 14 De ingratis liberis. — 2, 54 (55) De alienatione judicii, etc. (in integr. restit.).

(b) **Justinian:**

INST. 1, 12, §§ 5–6. — 4, 13 Ne filius pro patre vel pater pro filio emancipato, etc.

DIG. 4, 1 De integrum restitutioibus. — 4, 6 Majores xxv annis in integrum restit.

— 4, 4 De minoribus xxv annis. — 37, 8 De conjung. cum emancipato, etc.

— 4, 6 Majores xxv annis in integrum restit.

— 37, 8 De conjung. cum emancipato, etc.

CODE, 2, 21 (22) De integrum restit. minor. xxv annis. — 5, 39 Quando . . . minores, etc.

— 2, 22 (23) De filio fam. minore. — 5, 40 Si . . . pro minore, etc.

— 2, 23 (24) De fidejussor. minorum. — 5, 71 De praediis vel aliiis rebus minorum, etc.

— 2, 24 (25) Si tutor vel curator, etc. — 5, 73 Si quis ignorans rem minoris, etc.

— 2, 25 (26) Si . . . in integrum restitutio, etc. — 5, 74 Si major factus, etc.

— 2, titles 26 (27)–41 (42) relate to in integrum restitutio. — 8, 48 De emancipation. liberorum.

— 2, 42 (43) Si minor se majorem dixerit, etc. — 8, 49 (50) De ingratis liberis.

Nov. 72 Ut . . . res minorum, etc.

(c) **Post-Justinian:**

THEOPHILUS, 1, 12 §§ 5–6.

(1986) PROCHIRON, 26 *De emancipatione.*

- 31 *De restitutione.*
- BAS. 10, titles 1–24 relate to *in integrum restitutio.*
- 10, 25 *Si minor se majorem dixerit, etc.*
- 10, 26 *Si saepius in integr. restitutio postuletur.*
- 10, 27 *De his qui veniam aetatis impetraverunt.*
- 10, 28, *Si major factus, etc.*
- 10, titles 29–34 relate to *in integrum restitutio.*
- 10, 35 *Quibus ex causis majores xxv annis in integr. restit.*
- 10, 36 *Quibus ex causis majores in integr. restit.*
- 10, 37 *De judicij mutatione (in integr. restit.).*
- 31, 3 *De emancipatione, etc.*
- 37, 9 *Ex . . . facto . . . minores, etc.*
- 40, 6 *Si a parentibus quis emancipatus, etc.*

HEXABIBLOS, 1, 12 *De im-
puberibus et minoribus,
aeque in integrum restit.*

— 1, 17 *De potestatis pa-
triae dissolutione.*

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HUNTER, Roman law⁴, pp. 41, 212–14, 593, 608–9, 743, 991, 1028.

MACKELDEY (Dropsie), Roman law¹⁴, §§ 138, 174, 178, 220–33, 610–13, 642.

MACKENZIE, Roman law⁷, pp. 74, 141, 154, 155, 263.

MOYLE, Inst. of Justinian, vol. i, 5th ed. pp. 145, 563–7, 602.

PETIT, Droit romain⁷, §§ 97, 103, 124, 130, 811.

POSTE, Gaius⁴, pp. 80, 114–16, 193.

ROBY, Roman private law, vol. i, pp. 77, 123; vol. ii, pp. 259, 262.

SAVIGNY, System, vol. iii, § 106 (4); vol. vii, §§ 322–43.

SOHM (Ledlie⁸), Roman law, pp. 57, 58, 181, 210, 294–6, 486–8, 541.

III. *See also* *infra* § 992 (pa-
ternal power) and § 993
(guardianship); *supra* vol.
ii, §§ 437, 446–9.

**Birth, natural death, civil death, infamia or existimationis § 987
minutio, proof of life and death: references.**

I. Texts of Roman law:—

For English translations, see
supra §§ 945, 946, 948, 951,
952, 955.

(a) Ante-Justinian:

XII TABLES, viii, 22 (on infamy).

CAIUS, 1, §§ 128, 159–64 (on civil death).

PAULUS, Sent. 2, 24, §§ 6–10
De liberis agnoscendis.

(b) Justinian:

INST. 1, 12, §§ 1–3 (on civil death).

— 1, 16 (partly on civil death).

— 3, 1, § 5 (civil death).

DIG. 3, 2 De . . . infamia.

— 34, 5 De rebus dubiis
(partly on proof of life and death).

— 47, 12 De sepulchro violato (infamy).

CODE, 2, 11 (12) De . . . infamia, etc.

— 10, 59 (57) De infamibus.

— 10, 61 (59) De his qui in exsilium, etc.

Nov. 60 Ut defuncti seu funera eorum non injurientur, etc.

(c) Post-Justinian:

THEOPHILUS, 1, 12, §§ 1–3
(on civil death).

— 1, 16 (partly on civil death).

— 3, 1, § 5 (civil death).

BAS. 21, 1 De testibus integrae existimationis et infamibus.

— 21, 2 De his qui notantur infamia.

— 21, 3 De . . . infamia.

— 31, 7 De ventre praegnantis inspiciendo, etc.

— 31, 8 Si mulier ventris, etc.

— 31, 9 Si mulier ventris, etc.

— 43, 7 De multis, quae ex condemnatione judicum veniunt.

— 46, 1 De statu hominum, etc.

HEXABIBLOS, 6, 9 De calumniatoribus, etc.

— 6, 15 De iis qui infamia notantur.

— 6, 16 (on infamy).

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PETIT, *Droit romain*⁷, § 135.

POSTE, *Gaius*⁴, pp. 96–7.

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SOHM (Ledlie³), *Roman law*, pp. 182–5.

TITANIC disaster as raising quest. of survivorship, 74 *Cent. Law Journ.*, p. 416.

III. See also *supra* vol. ii, §§ 432, 450–56.

§ 988 **Betrothal, relationship (agnation and cognation), affinity, marriage, dos, donatio ante or propter nuptias, paraphera, second marriages, concubinage: references.**

I. **Texts of Roman law:—**

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, iv, 4; vi, 4; xi.

GAIUS, i, 59–96, 155; iii, 10–11.

PAULUS, Sent. 2, 19 *De nuptiis.*

— 2, 20 *De concubinis.*

— 2, 21a *De mulieribus . . . ad SC. Claudianum.*

— 2, 21b *De dotibus.*

— 2, 22 *De pactis inter virum et uxorem.*

— 2, 23 *De donation. inter vir. et ux.*

— 4, 11 *De gradibus.*

ULPIAN, Reg. 6 *De dotibus.*

— 7 *De . . . donation. inter vir. et ux.*

— 9 *De his qui in manu sunt.*

— 13 *De caelibe, orbo, etc.*

— 14 *De poena legisJuliae.*

— 15 *De decimis.*

— 16 *De solidi capacitate inter vir. et ux.*

COD. GREGORIAN. 2 *Si adv. donationes sponsis, etc.*

— 5 *De sponsalibus.*

— 5 *De nuptiis.*

— 11 (on dos).

COD. HERMOGENIAN. *De nuptiis.*

— *De donation. inter vir. et ux.*

COD. THEOD. 2, 5 De domino rei quae . . . consortibus, etc.
 —— 2, 21 De inoffic. dotibus.
 —— 3, 5 De sponsalibus et ante nuptias donation.
 —— 3, 6 Si . . . sponsalia.
 —— 3, 7 De nubtiis.
 —— 3, 8 De secundis nubtiis.
 —— 3, 9 Si secundo nubserit mulier, etc.
 —— 3, 10 Si nubtiae ex rescripto petantur.
 —— 3, 11 Si . . . potestate nubtias.
 —— 3, 12 De incestis nubtiis.
 —— 3, 13 De dotibus.
 —— 3, 14 De nubtiis gentilium.
 —— 3, 15 De fidejussoribus dotium.
 —— 8, 16 De infirmandis poenis caelibatus et orbitat.

COLL. MOSAIC. ET ROM. 6 De incestis nuptiis.

Nov. LEO AND SERVEUS, 1.

— MARCIAN. 4 De matrimoniis senatorum.

— MARJORIAN. 7 De curialibus.

— VALENTINIAN. 14 De fructibus inter vir. et ux., etc.

VATICAN FRAG. 94-122 De re uxoria et dotibus.
 —— 248-59 Quando donator, etc.

(b) Justinian: (§ 988)

INST. 1, 9 De patria potestate, 1.
 —— 1, 10 De nuptiis.
 —— 1, 15 De . . . adgnatorum tutela, 1.
 —— 2, 7 De donation., 3.
 —— 2, 8 Quibus alienare, etc. as far as § 1.
 —— 3, 2 De . . . adgnatorum successione, §§ 1-2.
 —— 3, 5 De successione cognat., 4.
 —— 3, 6 De gradibus cognationis.

DIG. 16, 1 Ad. SC. Velleianum.

— 23, 1 De sponsalibus.
 — 23, 2 De ritu nuptiarum.
 — 23, 3 De jure dotium.
 — 23, 4 De pactis dotalibus.
 — 23, 5 De fundo dotali.
 — 24, 1 De donation. inter inter vir. et ux.
 — 24, 3 Soluto matrimoniodos . . . petatur.
 — 25, 1 De impensis in res dotal., etc.
 — 25, 2 De actione rerum amotarum.
 — 25, 3 De agnoscendis et alendis liberis, etc.
 — 25, 4 De inspiciendo ventre custodiend. partu.
 — 25, 5 Si ventris nomine muliere, etc.
 — 25, 6 Si mulier ventris, etc.

(§988) —— 33, 4 De dote praelegata.
 —— 37, 7 De dotis collatione.
 —— 38, 11 Unde vir et uxor.
 —— 41, 9 Pro dote.
 —— 50, 16 De verb. signif. 101, 1.
 CODE, 2, 33 (34) Si adversus dotem.
 —— 3, 30 De inoff. dotibus.
 —— 4, 12 Ne uxor pro marito, etc.
 —— 5, 1 De sponsalibus.
 —— 5, 2 Si . . . sponsalia, etc.
 —— 5, 3 De donation. ante . . . vel propter nuptias et sponsaliciis.
 —— 5, 4 De nuptiis.
 —— 5, 5 De incestis et inutil. nuptiis.
 —— 5, 6 De interdicto matrimonio inter pupil. et tutor. seu curator. liberosque eorum.
 —— 5, 7 Si . . . potestate . . . nuptias.
 —— 5, 8 Si nuptiae ex rescripto petantur.
 —— 5, 9 De secundis nuptiis.
 —— 5, 10 Si secundo nupserit mulier, etc.
 —— 5, 11 De dotis promissione, etc.
 —— 5, 12 De jure dotium.
 —— 5, 13 De rei uxoriae actione, etc.
 —— 5, 14 De . . . dote . . . donation. ante nuptias et paraphernis.

—— 5, 15 De dota cauta et non numerata, etc.
 —— 5, 16 De donation. inter vir. et ux.
 —— 5, 18 Soluto matrimonio dos . . . petatur.
 —— 5, 20 Ne fidejussores . . . dotium, etc.
 —— 5, 21 Rerum amotarum.
 —— 5, 22 Ne pro dote . . . bona mariti, etc.
 —— 5, 23 De fundo dotali.
 —— 5, 26 De concubinis.
 —— 6, 40 De . . . viduitate et de lege Julia . . . tolendo.
 —— 6, 61 De bonis quae liberis . . . ex matrimonio, etc.
 —— 8, 57 (58) De infirmandis poenis caelbat. et orbitat, etc.
 —— 9, 11 De mulieribus quae servis . . . se junxerunt.
 Nov. 2 De non eligendo secundo nubentes mulieres, etc.
 —— 12 De incestis et nefariis nuptiis.
 —— 19 De filiis ante dotalia instrument. natis.
 —— 22 De nuptiis.
 —— 39 De . . . ea quae parit undecimo mense post viri mortem.
 —— 61 Ut . . . antenuptial. donation., etc.
 —— 68 Ut . . . lucra nuptialis ex orbitat., etc.

- 74 *Quibus . . . naturales filii efficiuntur legitimi, etc.*
- 78 *Ut liberti . . . restituantur natalibus, etc.*
- 84 *De consanguineis et uterinis fratribus.*
- 91 *Ut exactione . . . dotis . . . viro . . . antenupcial. donation.*
- 97 *De aequalitate dotis et propter nuptias donation. et augmento dotis et propter nupt. donation., etc.*
- 98 *Neque . . . ex dote . . . neque . . . ex sponsalicia, etc.*
- 100 *De tempore . . . super dotem.*
- 109 *De privilegiis dotis, etc.*
- 119 *Ut sponsalicia, etc.*
- 139 *Remissio poenae illicit. nuptiarum.*
- 143 *De raptis mulieribus et quae raptoribus nubunt.*
- 150 (same title as Nov. 143).
- 154 *De iis . . . qui illicit. nuptias, etc.*
- (c) **Post-Justinian:**
 - THEOPHILUS**, 1, 9 *De patria potestate*, 1.
 - 1, 10 *De nuptiis.*
 - 1, 15 *De legit. agnat.*
 - 2, 7 *De donation., 3.*
 - 2, 8 *Quibus alienare, etc., (§ 988) as far as § 1.*
 - 3, 2 *De . . . agnat. successione.*
 - 3, 5 *De successione cognat., 4.*
 - 3, 6 *De gradibus cognationis.*
 - ECLOGA**, 1 *De . . . sponsalibus.*
 - 2 *De matrimonio licto et prohibito primo et secundo, etc.*
 - 3 *De dote cauta et non numerata et de jure dotis.*
 - PROCHIRON**, 1 *De consensu sponsalium.*
 - 2 *De arrhis sponsalit.*
 - 3 *De donation. sponsalit.*
 - 4 *De definition et ritu nuptiarum.*
 - 5 *De rigore matrimonii.*
 - 6 *De donation. ante nuptias.*
 - 7 *De prohibitis nuptiis.*
 - 8 *De jure dotis.*
 - 9 *De vindicatione dotis, etc.*
 - 10 *De donation. inter vir. et ux.*
 - EPANAGOGA**, 14 *De sponsalibus.*
 - 15 *De arrhis et donation. sponsal.*
 - 16 *De nuptiis, et ritu earum.*
 - 17 *De nuptiis prohibitis.*
 - 18 *De dote.*

(§988) —— 19 De donation. ante nuptias.

—— 20 De donation. inter vir. et ux.

BAS. 9, 9 De privilegio . . . dotis.

—— 10, 12 Si adv. donationes.

—— 10, 16 Si adv. dotem.

—— 24, 4 Ne uxor pro marito, etc.

—— 28, 1 De sponsalibus.

—— 28, 2 De arrhis sponsal.

—— 28, 3 De munieribus sponsal.

—— 28, 4 De nuptiis, etc.

—— 28, 5 De nuptiis prohibitis.

—— 28, 6 De incestis nuptiis.

—— 28, 8 Soluto matrimonio . . . dos petatur.

—— 28, 9 Si dos reddita, etc.

—— 28, 10 De impensa in re dotali facta.

—— 28, 11 De actione rerum amotarum.

—— 28, 12 De lucris nuptialibus.

—— 28, 13 Ut . . . dos petitur, etc.

—— 28, 14 De viris et mulieribus ad secundas nuptias transeuntibus.

—— 28, 15 De . . . dotalium, et de ea quae undecimo mense post mortem mariti peperit.

—— 29, 1 De jure dotis et donation. ante nuptias, etc.

—— 29, 2 De augmento dotis et donation. ante nuptias, etc.

—— 29, 3 De tempore non numeratae dotis.

—— 29, 4 Ut donatio propter nuptias sit special. contract.

—— 29, 5 De pactis dotis.

—— 29, 6 De alienation. fundi dotal.

—— 29, 7 De rebus . . . donation. ante nuptias . . . et . . . de dote, etc.

—— 30, 1 De donation. inter vir. et ux.

—— 32, 1 De . . . concubinis et natural. liberis.

—— 37, 12 Ut . . . matres sine prohibitione tutelam liberorum gerant, etc.

—— 44, 7 De dote praelegata.

—— 45, 3 De gradibus cognatorum et affinium, etc.

—— 45, 5 Actio, per quam vir vel uxor . . . succedunt.

—— 45, 6 De Armeniis, ut . . . Romanorum leges sequantur.

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puberibus, etc., 1.

—— 1, 13, De mulieribus.

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—— 4, 1 De consensu sponsalium.

—— 4, 2 De arrhis sponsal.

—— 4, 3 De donation. sponsal.

— 4, 4 De definitione et
ritu nuptiarum.
— 4, 5 De civile matri-
monii rigore.
— 4, 6 De ante nuptias
donatione.
— 4, 7(6) De nuptiis pro-
hibitis.
— 4, 8 De nuptiis . . . et
gradibus cognitionis.
— 4, 9 (7) De iis, qui ad
secundas nuptias transeunt.
— 4, 10 (8) De jure dotis.
— 4, 11 (9) De vindica-
tione dotis, etc.
— 4, 12 De paraphernis.
— 4, 13 (10) De hypobolo.
— 4, 14 (11) De donation,
inter vir. et ux.
— 6, 4 De his qui suo se
sanguine miscent.

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(a) **In general:**

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 2325–2437.
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 PHILIPPINES (see WILLARD,
 Notes to Spanish Civil Code,
 Manila, 1904, pp. 11–20),
 1315–16, 1318–21, 1323,
 1326–52, 1354–1444. (See
 on these articles, WILLARD,
 Id. pp. 75–84.)
 PORTO RICO, 129–63, 1282–
 1347.
 QUEBEC, 115–82, 1257–1471.
 RUSSIA, 1–131, 1001–9.
 SPAIN, 42–103, 1315–1444.
 SWITZERLAND, 20–21, 90–136,
 159–251.
 III. See also *infra* § 989;
 supra vol. ii, §§ 459–83.

§ 989 **Divorce (repudium and divortium): references.**

I. **Texts of Roman law:—**

For English translations,
 see *supra* §§ 945, 946, 948,
 951, 952, 955.

(a) **Ante-Justinian:**

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 legis Juliae.

COD. HERMOGENIAN. De re-
 pudiis.

COD. THEOD. 3, 16 De repu-
 diis.

Nov. THEOD. 12 De repudiis.

(b) **Justinian:**

DIG. 24, 2 De divortiis et
 repudiis.

— 50, 16 De verb. signif.,
 101, 1.

CODE, 5, 17 De repudiis,
 etc.

— 5, 18 Soluto matri-
 monium, etc.

— 5, 21 Rerum amotarum.

— 5, 24 Divortio facto,
 apud quem liberi morari vel
 educari debent.

Nov. 98 . . . Et ut ex re-
 pudio, etc.

— 117 Ut liceat matri, etc.
 ch. 7–15.

— 140 Ut possit ex con-
 sensu dissolvi matrimonii.

(c) **Post-Justinian:**

ECLOGA, 2 De matrimonio
 ejus solutione.

PROCHIRON, De solutione ma-
 trimonii, etc.

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 matrimonii.

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 trimonii.

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 solutione matrimonii, etc.

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(b) Modern Codes:

References are to the Civil Code unless otherwise stated.

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AUSTRIA, 103–11, 132–6.

CHILE, 152–78.

FRANCE, 229–311.

GERMANY, 1564–87.

ITALY, 148–58.

JAPAN, 808–19.

LOUISIANA, 110–18, 136–61.

MEXICO, 226–89.

PHILIPPINES (see WIL-LARD, *Notes to Spanish Civil Code*, Manila, 1904, p. 11).

PORTO RICO, 163–78.

QUEBEC, 148–217.

RUSSIA, 37–60.

SPAIN, 101–7.

SWITZERLAND, 120–58.

III. See also *supra* § 988; vol. ii, §§ 484–91.

§ 990 Legitimation: references.

I. Texts of Roman law:—

For English translations, see
supra §§ 945, 946, 948, 951,
952, 955.

(a) *Ante-Justinian*:

XII TABLES, iv, 4.

COD. THEOD. 4, 6 *De naturalibus filiis*, etc.

NOV. THEOD. 22 *De bonis decurionum et de naturali filiis eorum*.

(b) *Justinian*:

INST. 1, 10 *De nuptiis*, 13.

— 3, 1 *De hereditatibus*, etc., 2a.

DIG. 25, 3 *De agnoscendis et alendis liberis*, etc.

CODE, 5, 27 *De naturali liberis*, etc.

— 10, 32 (31) *De decurionibus*, etc.

— 10, 44 (43) *De his qui sponte munera suscepérunt*.

NOV. 19 *De filiis ante dotalia instrumenta natis*.

— 38 *De naturali in cuiam deputandis*, etc.

— 39 *De ea quae parit undecimo mense post viri mortem*.

— 74 *Quibus modis naturales filii efficiuntur legiti* *timi*, etc.

— 78 *Ut . . . in libertis mulieribus . . . etiam nup*—

tias *legitimas . . . et filios suos*, etc.

— 89 *Quibus modis naturales efficiuntur sui et de . . . ex testamento seu ab intestato successione*.

(c) *Post-Justinian*:

THEOPHILUS, 1, 10 *De nuptiis*, 13.

— 3, 1 *De hereditatibus*, etc., 2a.

BAS. 32, 1 *De . . . naturali liberis . . . et concubinis*, etc.

— 32, 2 *De naturali liberis et . . . qui legiti facti sunt*.

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(b) **Modern Codes:**

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LOUISIANA, 198-245.

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PORTO RICO, 187-97.

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SPAIN, 119-41.

SWITZERLAND, 258-263, 302-27.

III. See also *supra* vol. i, § 150; vol. ii, §§ 483, 492-5.

Adoption (adrogatio and adoptio): references.

§ 991

I. **Texts of Roman law:** —

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

GAIUS, i, 97-123, 132, 134-41; iii, 82-7.

(§991) **ULPIAN**, Reg. 8 *De adoptionibus*.

(b) **Justinian**:

INST. 1, 11 *De adoptionibus*.
 — 1, 12 *Quibus modis jus potestatis solvitur*, 6, 8–10.
 — 3, 1 *De hereditatibus, etc.*, 14.
 — 3, 10 *De acquisitione per adrogation*.

DIG. 1, 7 *De adoption., etc.*
CODE, 8, 47 (48) *De adoptionibus*.

(c) **Post-Justinian**:

THEOPHILUS, 1, 11 *De adoptionibus*.
 — 1, 12 (see *supra* title of **INST.** 1, 12), 6, 8–10.
 — 3, 1 *De hereditatibus, etc.*, 14.
 — 3, 10 *De acquisitione per adrogation*.

BAS. 33, 1 *De adoptionibus*.
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GERMANY, 1741-72.

ITALY, 202-19.

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LOUISIANA, 214 et seq.

PHILIPPINES, 765-72 (Civil Procedure).

PORTO RICO, 200-211.

RUSSIA, 145-63.

SPAIN, 173-9.

SWITZERLAND, 264-9.

III. See also supra vol. ii, §§ 496-504.

The paternal power (patria potestas): references.

§ 992

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, iv, 1-3.

CAIUS, i, 48-51, 55, 65-97, 124-41, 162.

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— 2, 9 De in rem verso.

— 2, 10 De SC. Macedoniam.

— 2, 25 Quemadmodum filii sui juris efficiuntur.

— 5, 1 De liberali causa.

ULPIAN, Reg. 4 De his qui sui juris sunt.

— 5 De his qui in potestate sunt.

— 10 Qui in potestate mancipiove, etc.

COD. GREGORIAN. 3 Quod . . . qui alieno potestate, etc.

— 13, De patria potestate.

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COD. THEOD. 2, 31 Quod jussu.

— 2, 32 De peculio.

— 3, 3 De patribus qui filios distraxerunt.

— 5, 9 De expositis.

— 5, 10 De his qui sanguinolentes emptos, etc.

— 6, 36 De castrensi omnium palatinorum peculio.

— 8, 14 De ingratiss liberis.

— 8, 17 De jure liberorum.

— 8, 18 De maternis bonis, etc.

— 8, 19 De bonis quae filius fam. ex matrimonio adq.

(§992) — 11, 27 *De alimentis quae inopes parentes de publico petere debent.*

— 15, 8 *De lenonibus.*

Nov. MARJORIAN. 7 *De curialibus.*

Nov. THEOD. 14 *De paternis sive maternis bonis.*

Nov. VALENTINIAN. 2 *De postulando.*

— 33, *De parentibus qui filios distraxerunt, etc.*

(b) **Justinian:**

INST. 1, 8 *De his qui sui vel alieni juris, etc., to § 1.*

INST. 1, 9 *De patria potestate.*

— 1, 12 *Quibus modis jus potestatis solvitur.*

— 1, 16 *De capititis minutione, 3.*

DIG. 1, 6 *De his qui sui vel alieni juris, etc., 3-11.*

— 1, 7 *De adoption. et emancipation.; etc., 28, 31-2, 36.*

— 14, 5 *Quod cum eo qui in alieno potestate.*

— 14, 6 *De SC. Macedonianum.*

— 15, titles 1 and 2 (on the peculium).

— 15, 3 *De in rem verso.*

— 15, 4 *Quod jussio.*

— 25, 3 *De agnoscendis et alendis liberis, etc.*

— 25, 4 *De inspicioendo ventre, etc.*

— 25, 5 *Si ventris . . . mulier, etc.*

— 25, 6 *Si mulier ventris, etc.*

— 37, 8 *De conjungendis cum emancipato, etc.*

— 37, 12 *Si a parente quis manumissus sit.*

— 37, 14 *De jure patronatus.*

— 37, 15 *De liberis exhibendis, etc.*

— 49, 17 *De castrense peculio.*

CODE, 1, 3 *De episcopis et clericis, etc.*

— 4, 13 *Ne filius pro patre . . . conveniatur.*

— 4, 26 *Quod . . . de peculio seu quod jussu aut de in rem verso.*

— 4, 27 *Per quas personas nobis adq.*

— 4, 43 *De patribus qui filios distraxerunt.*

— 5, 25 *De alendis liberis, etc.*

— 6, 60 *De bonis maternis, etc.*

— 6, 61 *De bonis quae liberis in potestate constitutis vel aliter adq. . . ex matrimonio, etc.*

— 8, 8 *De liberis exhibendis, etc.*

— 8, 46 (47) *De patria potestate.*

— 8, 48 (49) *De emancipation., etc.*

- 8, 51 (52) *De infantibus expositis et . . . qui sanguinolentos emptos, etc.*
- 8, 58 (59) *De jure liberorum.*
- 9, 15 *De emendatione propinquorum.*
- 9, 17 *De his qui parentes vel liberos occiderunt.*
- 10, 32 (31) *De decurionibus, etc.*
- 10, 41 (40) *De honoribus et muneribus non . . . inter patrem et filium, etc.*
- 10, 62 (60) *De filiis familias et . . . pater pro his teneatur.*
- 10, 65 (63) *De legationibus.*
- 11, 41 (40) *De spectaculis . . . et lenonibus.*
- 12, 30 (31) *De castrense omn. palatinorum peculio.*
- 12, 36 (37) *De castrensi peculio militum, etc.*
- Nov. 2 . . . *Mulieres . . . et de succession. earum filiis suis.*
- 81 *Constitutio quae dignitatibus et episcopatu liberat filium patria potestate.*
- 153 *De infantibus expositis.*
- (c) **Post-Justinian:**
- THEOPHILUS**, 1, 8 *De his qui sui vel alieni juris sunt, to § 1.*
- 1, 9 *De patria potestate. (§ 992)*
- 1, 12 *Quibus modis jus patriae potestatis solvit.*
- 1, 16 *De capititis diminutione, 3.*
- ECLOGA**, 16 *De bonis . . . castrenibus militum, etc.*
- PROCHIRON**, 22 *De testamento hominum alieni juris.*
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- EPANAGOGA**, 31 *De testamento hominum alieni juris.*
- BAS.** 10, 5 *De filiisfamilias minoribus.*
- 18, 1 *De actione . . . adv. eum qui aliquem tabernae suae administrand. praeposuit.*
- 18, 2 *De actione . . . adv. . . . patrem, etc.*
- 18, 3 *De actione . . . adv. patrem, etc.*
- 18, 4 *De SC. Macedoniano, etc.*
- 18, 5 *De actione de peculio . . . adv. patrem, etc.*
- 18, 6 . . . *De peculio, etc.*
- 18, 7 *De actione quae de in rem . . . vel patris verso, etc.*
- 18, 8 *De his quae jussu . . . patris . . . contrahit, etc.*
- 19, 1 *De . . . patribus qui filios distrahunt.*

(§ 992) — 24, 1 Ne . . . filius pro patre, etc.

— 31, 1 De his qui sui vel alieni juris sunt.

— 31, 2 De observantia parentibus . . . et de liberis exhibendis, etc.

— 31, 3 De emancipatione liberorum et ingratis liberis, etc.

— 31, 4 Quibus modis jus potestatis solvatur.

— 31, 5 Constitutio, quae per dignitates et episcopatum filios patria potestate liberat.

— 31, 6 De agnoscendis et alendis liberis, etc.

— 33, 2 De infantibus expositis . . . et . . . qui . . . sanguinolentos emerunt, etc.

— 40, 6 Si . . . quis emancipatus sit.

— 45, 4 De bonis maternis.

— 57, 2 De castrenibus peculiis.

— 60, 59 De emendatione . . . propinquorum.

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— 5, 2 De testamento hominum alieni juris.

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JAPAN, 877-99.

LOUISIANA, 178-97, 215-45, 365-88.

MEXICO, 290-324, 362-402.

PHILIPPINES (see WILLARD, *Notes to Spanish Civil Code*, pp. 20-23, 28-30, Manila, 1904).

PORTO RICO, 180-99, 222-36.

QUEBEC, 218-36, 242-5.

RUSSIA, 164-95.

SPAIN, 108-18, 154-72.

SWITZERLAND, 252-7, 273-89.

III. See also *infra* § 1000; *supra* vol. ii, §§ 434, 446, 505-14.

§ 993 **Guardianship (tutela and curatio): references.**

I. Texts of Roman law:—

For English translations, see
supra §§ 945, 946, 948, 951,
952, 955.

(a) Ante-Justinian:

XII TABLES, v. 1-3, 6-7; viii,
20.

GAIUS, i, 132, 142-58, 164-
200; ii, 80-85.

PAUL. Sent. 1, 1a, 22-30.

— 1, 4 De negotiis gestis.

— 1, 9 De minoribus xxv
annorum; also 1, 9a.

— 2, 27 De excusationibus
tutorum.

— 2, 28 De potioribus nomi-
nandis.

— 2, 29 Qui potiores nomi-
nare, etc.

— 2, 30 Ad oration. divi
Severi.

— 2, 30a; also 3, 10.

— 5, 1 De liberali causa,
8; also 5, 5b.

ULPIAN, Reg. 11 De tutelis.

— 12 De curatoribus.

— 29 De bonis libertorum.

COD. GREGORIAN. 2 Si adv.
donation., etc.

— 6, 18 Abitrium tutelae.

COD. THEOD. 2, 4 De de-
nuntiation., etc.

— De integri restitutione.

— 3, 17 De tutor. et cura-
tor. creandis.

— 3, 18 Qui petant.

COD. THEOD. 3, 30 De ad-
ministratione et periculo
tutor. et curator.

— 3, 31 De excusatione
tutorum.

— 3, 32 De praediis mino-
rum sine decreto non alien-
andis.

— 4, 3 De Carboniano edic-
to.

— 9, 8 Se quis eam cuius
tutor . . . corruperit.

— 12, 17 De . . . numero
liberorum vel paupertate
excusationem, etc.

Nov. THEOD. 11 De tutori-
bus.

VATICAN FRAG. De excusa-
tione.

(b) Justinian:

INST. 1, 12 Quibus modis, etc.,
6.

— 1, 13 De tutelis.

— 1, 14 Quibus . . . tu-
tores testamento, etc.

— 1, 15 De legitima adgnat.
tutela.

— 1, 16 De cap. minu-
tione, 7.

— 1, 17 De legitima pat-
tronum tutela.

— 1, 18 De legitima paren-
tum tutela.

— 1, 19 De fiduciaria tu-
tela.

- 1, 20 De Atiliciano tutore, vel eo . . . ex lege Julia et Tatia.
- 1, 21 De auctoritate tutorum.
- 1, 22 Quibus modis tutela finitur.
- 1, 23 De curatoribus.
- 1, 24 De satisdatione tutor. vel curator.
- 1, 25 De excusationibus tutor. vel curator.
- 1, 26 De suspectis tutor. vel curator.
- 2, 8 Quibus modis alienare, etc. 2.
- DIG. 4, 1 De integrum restitution.
- 4, 4 De minoribus xxv annis.
- 25, 4 De inspicioendo ventre custodiendoque partu.
- 25, 6 Si mulier ventris.
- 26, 1 De tutelis.
- 26, 2 De testamentaria tutela.
- 26, 3 De confirm. tutor. vel curator.
- 26, 4 De legitimis tutor.
- 26, 5 De tutor. et cura-
tor. datis . . . et in quib.
causis specialiter dari,
etc.
- 26, 6 Qui petant tutores
vel curatores, etc.
- 26, 7 De administra-
tione et periculo tutor. et
curator., etc.
- 26, 8 De auctoritate et (§ 998)
consensu tutor. et curator.
- 26, 9 Quando ex facto
tutor. vel curator. agere,
etc.
- 26, 10 De suspectis tutor.
et curator.
- 27, 1 De excusationibus.
- 27, 2 Ubi pupillus edu-
cari vel morari debeat,
etc.
- 27, 3 De tutelae et
rationibus distrahendis et
utili curationis causa
actione.
- 27, 4 De contraria tutel-
ae et utili actione.
- 27, 5 De eo qui pro
tutor. prove curator., etc.
- 27, 6 Quod falso tutor,
etc.
- 27, 7 De fidejussor. et
nominator. et heredibus
tutor. et curator.
- 27, 8 De magistrat. con-
venientibus.
- 27, 9 De rebus eorum,
qui sub tutela vel cura sunt,
sine decreto non alienandis,
etc.
- 27, 10 De curator. fu-
rios et aliis extra minores
dandis.
- 37, 8 De ventre . . . et
curatore ejus.
- 42, 7 De curatore bonis
dando.
- 46, 6 Rem pupilli vel
adulescentis salvam fore.

(§993) **DIG.** 47, 23 *De popularibus actionibus.*
 — 49, 10 *Si tutor vel cura-
tor . . . appellaverit.*
 — 50, 5 *De vacatione et ex-
cusatione munerum.*
 — 50, 6 *De jure immuni-
tatis.*

CODE, 2, 21 (22) *De . . . in-
tegrum restitutione minor.
xxv annis.*
 — 2, 22 (23) *De filiofam.
minore.*
 — 2, 23 (24) *De fidejussor.
minorum.*
 — 2, 24 (25) *Si tutor vel
curator intervenerit.*
 — 2, 26 (27) *Si adv. rem
judicatam.*
 — 2, 27 (28) *Si adv. ven-
ditionem.*
 — 2, 28 (29) *Si adv. ven-
ditionem pignoris.*
 — 2, 29 (30) *Si adv. do-
nationem.*
 — 2, 30 (31) *Si adv. li-
bertatem.*
 — 2, 31 (32) *Si adv. trans-
actionem, etc.*
 — 2, 32 (33) *Si adv. solu-
tionem.*
 — 2, 33 (34) *Si adv. dotem.*
 — 2, 34 (35) *Si adv. de-
lictum.*
 — 2, 35 (36) *Si adv. usu-
cationem.*
 — 2, 36 (37) *Si adv. fiscum.*
 — 2, 37 (38) *Si adv. credi-
torem.*

— 2, 38 (39) *Si ut se here-
ditate abstineat.*
 — 2, 39 (40) *Si ut omissam
hereditatem, etc.*
 — 2, 40 (41) *In . . . in-
tegrum restitutio, etc.*
 — 2, 41 (42) *Qui et
adv. . . integrum resti-
tutio, etc.*
 — 2, 42 (43) *Si minor se
majorem dixerit, etc.*
 — 2, 43 (44) *Si saepius . . .
integrum restitutio, etc.*
 — 2, 45 (46) *Si major fac-
tus ratum habuerit.*
 — 2, 46 (47) *Ubi et apud
quem cognitio restitutionis,
etc.*
 — 2, 47 (48) *De reputa-
tion. . . integrum restitu-
tionis.*
 — 2, 48 (49) *Etiam per
procurator. . . integrum
restitutionis, etc.*
 — 2, 49 (50) *In integrum
restitutio, etc.*
 — 2, 52 (53) *De tempori-
bus in integrum restitu-
tionis, etc.*
 — 3, 6 *Qui legit. personam
in judiciis, etc.*
 — 3, 21 *Ubi agi oportet
ratiociniis, etc.*
 — 5, 26 *De interdicto matri-
monio inter pupil. et tutor.
seu curator., etc.*
 — 5, 28 *De tutela testa-
mentaria.*
 — 5, 29 *De confirm. tutore.*

- 5, 30 De legitima tutela.
- 5, 31 Qui petant tutor.
vel curator.
- 5, 32 Ubi petant tutor.
vel curator.
- 5, 33 De tutor. et cura-
tor. . . . illustrium per-
sonarum.
- 5, 34 Qui dare tutor. vel
curator.
- 5, 35 Quando mulier
tutelae officio fungi potest.
- 5, 36 In quibus causis
tutorem habenti tutor vel
curator dari potest.
- 5, 37 De administra-
tione tutor. vel curator.,
etc.
- 5, 38 De periculo tutor.
et curator.
- 5, 39 Quando ex facto
tutor. vel curator. agere,
etc.
- 5, 40 Si ex pluribus
tutor. vel curator. unus
agere, etc.
- 5, 41 Ne tutor vel cura-
tor vectigal conducat.
- 5, 42 De tutor. vel cura-
tor. qui satis non dedit.
- 5, 43 De suspectis.
- 5, 44 De in item dando
tutor. vel curator.
- 5, 45 De eo qui pro
tutore . . . gessit.
- 5, 46 Si mater indemni-
tatem, etc.
- 5, 47 Si contra matris
voluntatem tutor datus sit.
- 5, 48 Ut . . . post pu- (\$993)
bertatem adsit tutor.
- 5, 49 Ubi pupil. edu-
cerentur.
- 5, 50 De alimentis pu-
pillo, etc.
- 5, 51 Arbitrium tutelae.
- 5, 52 De dividenda tu-
tela, etc.
- 5, 53 De in item ju-
rando.
- 5, 54 De heredibus tu-
torum.
- 5, 55 Si tutor non ges-
serit.
- 5, 56 De usuris pupil-
laribus.
- 5, 58 De contrario ju-
dicio.
- 5, 59 De auctoritate,
etc.
- 5, 60 Quando curator.
vel tutor. esse desinat.
- 5, 61 De actore a tutore
seu curatore dando.
- 5, 62 De excusationibus,
etc.
- 5, 63 Si falsis adlegation.
excusatus sit.
- 5, 64 Si tutor rei pub-
licae causa aberit.
- 5, 65 De excusatione
veteranorum.
- 5, 66 Qui numero li-
berorum se excusant.
- 5, 67 (68) Qui aetate.
- 5, 68 (67) Qui morbo.
- 5, 69 Qui numero tute-
larum.

(§993) **CODE**, 5, 70 De curator. furiosi vel prodigi.

— 5, 71 De praediis vel aliis rebus minorum sine decreto non alienandis vel obligandis.

— 5, 72 Quando decreto opus non est.

— 5, 73 Si quis ignorans rem minoris esse sine decreto comparavit.

— 5, 74 Si major factus sine decreto . . . alienation. ratam habuerit.

— 9, 10 Si quis eam cuius tutor . . . corruperit.

— 10, 43 (42) . . . Civilium munera, etc.

— 10, 44 (43) De his qui . . . munera, etc.

— 10, 48 (47) De excusationibus munerum.

— 10, 49 (48) De . . . muneribus . . . nemini licet se excusare.

— 10, 50 (49) Qui aetate se excusant.

— 10, 51 (50) Qui morbo.

— 10, 52 (51) De his qui munero liberorum vel paupertate excusationem, etc.

— 10, 53 (52) De professoribus et medicis.

— 10, 54 (53) De athletis.

— 10, 55 (54) De his qui non impletis stipendiis sacramento soluti sunt.

— 10, 56 (55) Quibus muneribus excusantur . . .

post . . . militiam vel ad vocation., etc.

— 10, 57 (56) De conductoribus vectigalium fisci.

— 10, 58 (56) De libertinis.

— 10, 59 (57) De infamibus.

— 10, 66 (64) De excusationibus artificum.

— 10, titles 67 (65)–73 (71), are minor titles on “materia”.

Nov. 72 Ut . . . res minorum . . . et ut curatores, etc.

— 94 Ut sine prohibitione matres debetrices et cred. tutelam gerant minorum, etc.

— 131 De ecclesiast. titulis.

— 155 Ut matres tutelae rationibus obnoxiae sint.

(c) **Post-Justinian:**

THEOPHILUS, i, 12, 6; i, 13–15; i, 16, 7; i, 17–26; ii, 82 (same titles as **INST. supra**).

ECLOGA, 7 De pupillis, etc.

PROCHIRON, 31 De restituzione.

— 36 De tutoribus.

EPANAGOGA, 38 De tutoribus.

BAS. 9. 6 Quibus ex causis, etc.

— 9, 7 De rebus auctoritate judicum poss., etc.

— 10, 4 De restituzione minorum.

— 10, 5 De filiis fam. minor.

- 10, 7 Si tutor vel curator intervenerit.
- 10, 14 Si adv. transactionem . . . minor, etc.
- 10, 21 Si quis se hereditate abstineat.
- 10, 25 Si minor se major. dixerit, etc.
- 10, 34 De temporibus . . . in integrum restit. . . minorum, etc.
- 17, 1 De negotia aliena gerentibus.
- 17, 2 De . . . sumtus, etc.
- 37, 1 De tutor. et curator.
- 37, 2 De tutor. testamentariis.
- 37, 3 De confirm. tutor. et curator.
- 37, 4 De legitimis tutor.
- 37, 5 De tutor. et curator. datis, etc.
- 37, 6 Qui petant curator. vel tutor., etc.
- 37, 7 De administratione tutor. et curator. et de periculo, etc.
- 37, 8 De auctoritate et consensu tutor. et curator.
- 37, 9 Ex . . . facto tutor. vel curator. . . . agere, etc.
- 37, 10 De suspicione tutor. et curator.
- 37, 11 De curator. et tutor. et cura minorum.
- 37, 12 Ut matres sine (§ 993) prohibitione liberorum tutelam gerant, etc.
- 38, 1 De excusatione . . . tutor. et curator.
- 38, 2 Ubi pupil. educari et morari debeat, etc.
- 38, 3 De actione . . . in tutor. et curator. datur, et de rationibus, etc.
- 38, 4 De contraria tutelae et utili actione.
- 38, 5 De actione . . . adv. tutor. et curator., etc.
- 38, 6 Si falsi tutoris auctoritate negotium gestum, etc.
- 38, 7 De . . . heredibus tutor. et curator. et fidejussor. eorum.
- 38, 8 Magistratus teneri ob inopiam tutor. a se datorum.
- 38, 9 De rebus . . . qui sub tutela vel cura . . . sine decreto non alienandis vel obligandis.
- 38, 10 De curator. qui dantur furiosis vel prodigis, vel aliis extra minores.
- 38, 11 Res pupilli salva esto.
- 38, 12 De curator. bonis dandis.
- 38, 13 Ne tutor vel curator vectigalia conducat.
- 38, 14 De dividenda tutela, etc.

(§993) **BAS.** 38, 15 De jurejurando in item.
 — 38, 16 Si tutor non geserit.
 — 38, 17 De usuris pupil.
 — 38, 18 De contrario judio.
 — 38, 19 Quando tutor. vel curator. esse desinant.
 — 40, 2 De bonorum poss. furiosi, muti, surdi, coeci.
 — 54, 5 De vacatione et excusatione munerum.
 — 54, 6 De jure immunitat.
 — 60, 57 Si quis eam cuius tutor . . . corruperit.

HEXABIBLOS, 1, 12 De imputribus et minoribus, aequ in integrum restit.
 — 2, 5 De munibus, etc.
 — 5, 12 (11) De tutor., curator., etc.

II. Modern references:—

(a) **In general:**
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GIRARD, Manuel de droit romain⁵, pp. 200–235.
HUNTER, Roman law⁴, pp. 126–30, 696–735.
MACKELDEY (Dropsie), Roman law¹⁴, §§ 614–48.
MACKENZIE, Roman law⁷, pp. 149–59.
MOREY, Roman law, pp. 252–60.
MOYLE, Inst. of Justinian, vol. i, 5th ed. pp. 147–80.
PETIT, Droit romain⁶, §§ 102–32.
POSTE, Gaius⁴, pp. 90–116.
ROBY, Roman private law, vol. i, pp. 92, 102, 121.
SAVIGNY, System, vol. iii, §§ 106–11; vol. vii, §§ 322–4; vol. viii, §§ 380, 396.
SCHUSTER, German civil law, §§ 449–67.
SOHM (Ledlie⁸), Roman law, pp. 488–500.

(b) **Modern Codes:**
 References are to the Civil Code, unless otherwise stated.
ARGENTINA, 411–528.
AUSTRIA, 187–284.
CHILE, 338–544.
FRANCE, 389–515.
GERMANY, 1773–1921.
ITALY, 240–349.
JAPAN, 900–953.

LOUISIANA, 246-426.

MEXICO, 403-597.

PHILIPPINES (civil procedure), 551-81.

PORTO RICO, 237-302.

QUEBEC, 114, 246-351.

RUSSIA, 212-382.

SPAIN, 199-320.

SWITZERLAND, 360-456.

III. See also supra § 986; vol. ii, §§ 445, 449, 515-35.

Artificial persons, particularly private corporations: refer-
ences. No mention at all of corporations is made in the
Institutes of Justinian¹: this subject was almost entirely
reserved for the fifth or last year in Roman law schools.²
But the Digest and Code of Justinian are very important
sources of the Roman law of corporations.³ The Theodosian
Code⁴ is our great repository of information in regard to the
legislation of the early Christian Emperors concerning cor-
porations, both public and private. Another and voluminous
source of information has arisen from the modern discoveries,
in the remains of Roman cities, of tablets containing inscrip-
tions of all sorts. These have been collected in Mommsen's
famous *Corpus inscriptionarum Latinarum*.⁵

I. Texts of Roman law:—

For English translations, see
supra §§ 945, 946, 948, 951,
952, 955.

(a) Ante-Justinian:

XII TABLES, viii, 27.

ULPIAN, Reg. xxii, 5; xxiv, 29.

COD. THEOP. 6, 13 De com-
itibus et tribunis scholarum.

— 8, 9 De lucris officiorum.

— 8, 10 De concussionibus
advocatorum, etc.

— 10, 19 De metallis et me-
allariis.

— 10, 20 De murilegulis,
etc.

— 10, 21 De vestibus,
etc.

— 10, 22 De fabricensi-
bus.

— 10, 23 De classicis.

— 14, 2 De privilegiis cor-
poratorum urbis Romae.

— 14, 3 De pistoribus et
catabolensibus.

¹ See supra vol. i, § 138.

² See supra vol. i, § 161.

³ Especially *Dig.* 3, 4, and *Dig.* 47, 22. See supra vol. 1, §§ 136-47.

⁴ See supra vol. i, § 128.

⁵ This was published in 1861. As to Mommsen, see supra vol. i, § 353. The *Corpus inscript. Graecarum* (1856) is also a source of light on Roman corporation law.

(§ 994) — 14, 4 *De suariis, pecuariis, et susceptoribus vini ceterisque corporatis.*
 — 14, 5 *De mancipibus thermarum urbis et subvectione lignorum.*
 — 14, 6 *De calcis coctoribus urbis Romae et Constantiop.*
 — 14, 7 *De collegiatis.*
 — 14, 8 *De centonariis et dendroforis.*
 — 14, 18 *De mendicantibus non invalidis.*
 — 14, 22 *De saccariis Portus Romae.*
 — 14, 27 *De Alexandrinae plebis primatibus.*
 NOV. SEVERUS, 2.
 NOV. THEODOS. 6 *De bonis fabricensium.*
 NOV. VALENTINIAN. 29 *De naviculariis amnicis.*
 — 36 *De suariis, boariis et pecuariis.*

(b) **Justinian:**
 DIG. 3, 4 *Quod cujuscumque universitatis, etc.*
 — 34, 5 *De rebus dubiis, 20.*
 — 47, 22 *De collegiis et corporibus.*
 — 49, 14 *De jure fisci.*
 — 50, 16 *De verb. signif., 16 and 85.*
 CODE, 1, 3 *De episcopis, etc. 48.*
 — 3, 23 *Ubi quis de curiali vel cohortali . . . conveniatur.*
 — 6, 62 *De hereditatibus decurionum, naviculariorum cohort. militum et fabricensium.*
 — 10, 10 *De bonis vacantibus et de incorporatione.*
 — 11, 2 (1) *De naviculariis, etc.*
 — 11, 3 (2) *De praediis naviculariorum.*
 — 11, 4 (3) *De navibus non excusandis.*
 — 11, 5 (4) *Ne quid oneri publico imponatur.*
 — 11, 7 (6) *De metallariis et metallis, etc.*
 — 11, 8 (7) *De murilegulis, etc.*
 — 11, 10 (9) *De fabricensibus.*
 — 11, 16 (15) *De pistoribus.*
 — 11, 17 (16) *De suariis.*
 — 11, 18 (17) *De collegiatis, etc.*
 — 11, 26 (25) *De mendicantibus validis.*
 — 11, 27 (26) *De natuis Tiberinisi.*
 — 12, 11 *De comitibus et tribunis scholarum.*
 — 12, 17 *De domesticis et protectoribus.*
 — 12, 29 (30) *De privilegiis scholarum.*
 NOV. 64 *De hortulanis Constantiop.*

(c) **Post-Justinian:**

BAS. 54, 16 *De purpura imperatoris*, etc.
 — 54, 20 *De suariis et susceptoribus vini, et reliquis corporibus*.
 — 54, 21 *De collegiatis*, etc.
 — 54, 28 *De jure reipublicae*.
 — 60, 32 *De collegiis sodalitiis et corporibus*, etc.

II. Modern references:—(a) **In general:**

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 MACKELDEY (Dropsie), Roman law¹⁴, §§ 154–7.
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 — The crown as a corporation (Id., vol. iii, pp. 244–70).
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¹ BACKUS, Foreign corporations in Colombia, 6 *Southern Calif. Law Rev.*, pp. 31–40.

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(b) **Modern Codes:**

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AUSTRIA, 1216; Code of commerce.

CHILE, 545-64; Code of commerce, 348, 424-69.

FRANCE, Code of commerce, book i, title 3, "sociétés anonymes," etc.

GERMANY, 21-89; Code of commerce, 182-311.

ITALY, Code of commerce, book i, title 9, especially art. 76 et seq., 121 et seq.

JAPAN, 33-84; Code of commerce, 42-8, 119-234.

LOUISIANA, 427-47.

MEXICO, Code of commerce, 89-99, 163-225, 265-7.

PHILIPPINES, 35-9.

PORTO RICO, 27-92.

QUEBEC, 352-73.

RUSSIA, 2139-98.

SPAIN, 35-9; Code of commerce, 116-24, 151-238.

SWITZERLAND, 52-89; Code of obligations, 612-715.

III. **See also** supra vol. ii, §§ 536-56, 908-12.

§ 995 Things, ownership, and possession: references.

I. **Texts of Roman law:—**

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, vi, 5-6, 11; vii, 1-2, 9-10; x (all); xii, 1, 3-4.

GAIUS, ii, 1-11, 65; iv, 153.

PAUL. Sent. 1, 11 De satis-
dando.

— 1, 13b Si hereditas, etc.

— 1, 21 De supulchria, etc.

— 5, 2 De usucapione.

— 5, 19 De sacrilegii.

— 5, 19a (on res sacrae).

— 5, 26 Ad legem Julianam de vi publica, etc., §§ 3-4.

ULPIAN, Reg. 19 De dominiis et adquisitione rerum.

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COD. HERMOGENIAN. Ad exhibendum.

COD. THEOD. 2, 6 De temporum cursu, etc.

— 2, 23 De rei vindicatione.

— 4, 21 Quorum bonorum.

— 4, 22 Unde vi.

— 4, 23 Utrubi.

— 4, 24 De aedificiis privatis et publicis.

— 10, 3 De locatione fundorum . . . et rei publicae.

— 11, 38 De possessione . . . transferenda.

— 14, 14 De campo Martio urbis Romae.

— 15, 3 De itinere muniendo.

COLL. MOSAIC. ET ROM. De termino amoto.

CONST. SIRMONDIAN. 16.

Nov. MARJORIAN. 4 De aedificiis publicis.

Nov. THEOD. 19 De rescind. venditione. fundorum rei domenicae.

— 23 De locis rei publicae, etc.

Nov. VALENTINIAN. 8 De invasoribus.

(b) **Justinian:**

INST. 2, 1 De rerum divisione, 1-11, 47, 48.

— 4, 15 De interdictis, 5.

DIG. 1, 8 De divisione rerum. (§ 995)

— 6, 1 De rei vindicatione.

— 6, 2 De Publiciana in rem actione.

— 6, 3 Si ager vectigalis, etc.

— 10, 4 Ad exhibendum.

— 11, 7 De religiosis, etc.

— 11, 8 De mortuo . . . et sepulchro, etc.

— 14, 2 De lege Rhodia de jactu.

— 39, 1 De operis novi nuntiatione, 1 and 5.

— 41, 1 De adquirendo rerum dominio.

— 41, 2 De adquirenda vel amitt. possessione.

— 41, 4 Pro emptore.

— 41, 5 Pro herede vel pro possessore.

— 41, 7 Pro derelicto.

— 41, 8 Pro legato.

— 41, 10 Pro suo.

— 42, 4 Quibus ex causis in possessione, etc.

— 42, 5 De rebus auctoritate judicis possidendis, etc.

— 43, 2 Quorum bonorum.

— 43, 3 Quod legatum.

— 43, 4 Ne vis fiat ei, qui in possessione.

— 43, 6 Ne quid in loco sacro fiat.

— 43, 7 De locis et itineribus.

— 43, 8 Ne quid in loco publico, etc.

— 43, 9 De loco publico fruendo.

(§995) — 43, 10 De via publica, etc.
 — 43, 11 De via publica, etc.
 — 43, 12 De fluminibus, etc.
 — 43, 13 Ne quid in flumine publico, etc.
 — 43, 14 Ut in flumine publico navigare, etc.
 — 43, 15 De ripa munienda.
 — 43, 16 De vi et vi armata.
 — 43, 17 Ut possidetis.
 — 43, 21 De rivis.
 — 43, 27 De arboribus caedendis.
 — 43, 31 Utrubi.
 — 44, 3 De . . . accessionibus possessionum.
 — 47, 21 De termino moto.
 — 48, 7 Ad legem Julianam de vi privata.
 — 50, 16 De verborum significacione.
 CODE, 2 14 (15). De his, qui potentiorum nomine titulos praediis adfigunt, etc.
 — 2, 16 (17) Ut neminem liceat sine judicis auctoritate signa imprimere rebus, quas alius tenet.
 — 2, 15 (16) Ut nemo privatus titulos praediis suis vel alienis imponat, etc.
 — 3, 16 Ubi de possessione agi oportet.
 — 3, 19 Ubi in rem actio exerceri debet.
 — 3, 27 Quando liceat sine judice . . . vindicare, etc.
 — 3, 32 De rei vindicatione.
 — 6, 38 De verborum et rerum significatione.
 — 7, 25 De nudo ex jure Quiritium tollendo.
 — 7, 31 De . . . sublata differentia rerum mancipi et nec mancipi.
 — 7, 32 De adquirenda et retinenda possessione.
 — 7, 69 Si de momentaria possessione, etc.
 — 7, 72 De bonis auctoritate judicis possidendis, etc.
 — 8, 4 Unde vi.
 — 8, 5 Si per vis vel alio modo absentis perturbata possesio.
 — 8, 6 Ut possidetis.
 — 8, 11 (12) De operibus publicis.
 — 8, 44 (45) De evictionibus.
 — 8, 45 (46) Creditorem evictionem non debere.
 — 9, 12 Ad legem Julianam de vi publica seu privata.
 — 9, 19 De sepulchro violato.
 — 9, 29 De crimine sacrilegii.
 — 9, 33 Vi bonorum rapitorum.
 — 10, 10 De bonis vacantibus, etc.

— 10, 34 (33) *De praediis curialium, etc.*

— 11 6 (5) *De naufragiis.*

— 11, 56 (55) *Non licere . . . ad extraneum transferre.*

— 11, 61 (60) *De pascuis publicis vel privatis.*

— 11, 75 (74) *De privilegiis domus Augustae, etc.*

— 11, 77 (76). *De palatiis.*
Nov. 36 *Ut hi qui in Africa . . . debeat vindicare.*

— 65 *De alienatione rerum ecclesiae Mysiae relictarum pro captivorum redemp- tione, etc.*

— 67 *Ut nullus fabricet oratorii domum praeter voluntatem episcopi, etc.*

— 111 *Haec const. innovat . . . praescriptionem centum annorum locis venerabilibus, etc.*

— 120 *De alienatione . . . rerum sacrarum.*

— 131 *De ecclesiast. titulis.*

— 167 *Generalis maxima forma . . . mitti in pos- sessionem, etc.*

EDICTA (in appendix to Nov.), 5.

(c) **Post-Justinian:**

THEOPHILUS, 2, 1 *De rerum divisione, §§ 1-11, 47-8.*

— 4, 15 *De interdictis, 5.*

PROCHIRON, 38 *De novis operis.*

— 10, 34 (33) *De novis operibus.*

BAS. 2, 2 *De verborum signifi- catione.*

— 7, 10 *De his, qui . . . titulos praediis affigunt, etc.*

— 7, 11 *Ut nemo privatus titulos praediis . . . vel alienis imponat, etc.*

— 7, 19 *De his, qui legiti- mam personam in judiciis habeant, etc.*

— 9, 7 *De rebus auctori- tate judicum possidendis, etc.*

— 15, 1 *De rebus vindicandis, etc.*

— 15, 2 *De Publiciana in rem actione.*

— 15, 4 *De rebus exhibendis, etc.*

— 27, 1 *De rebus, de qua- rum dominio disceptatur.*

— 46, 3 *De rerum divi- sione, etc.*

— 50, 1 *De dominio ex variis modis, etc.*

— 50, 2 *De acquisita vel amissa possessione.*

— 50, 7 *De derelictis.*

— 51, 5 *Ne vis fiat ei, qui in possessionem missus, etc.*

— 53, 3 *De naufragio, etc.*

— 53, 8 *Capita excerpti juris Rhodiorum navalis.*

— 54, 12 *De operibus pub- licis.*

— 54, 37 *De theatris.*

(§995) —— 55, 13 De diversis praediis . . . templorum et civitatum, etc.
 —— 56, 20 De adjectionibus.
 —— 56, 21 Quomodo quis in possessionem mittendus sit.
 —— 58, 8 De locis et itineribus publicis, etc.
 —— 58, 10 De novi operis, etc.
 —— 58, 11 De aedificiis privatis.
 —— 58, 12 De operibus publicis, etc.
 —— 58, 14 De interdictis.
 —— 58, 15 Ne quis in loco sacro fiat.
 —— 58, 16 Ne quid in flumine publico ripave, etc.
 —— 58, 17 Interdictum ad retinend. possession.
 —— 58, 23 Quod vi aut clam.
 —— 59, 1 De monumentis, etc.
 —— 59, 2 De mortuo . . . et sepulchro, etc.
 —— 59, 3 De funere, etc.
 —— 60, 16 De arboribus . . . caesis.
 —— 60, 17 De bonis vi rapitis, etc.
 —— 60, 18 Ex lege Julia de vi publica et privata.
 —— 60, 23 De violatione sepulcrorum, etc.
 —— 60, 31 De termino moto.
 —— 60, 69 De reliquis punitorum.
HEXABIBLOS, 1, 16 De militibus.

—— 2, 1 De possessione et dominio.
 —— 2, 4 De novis operibus.
 —— 6, 5 De furibus . . . sepulcrorum, etc.
 —— Leges agrariae (praefatio).
 —— Leges agrariae, 1 De agric.
 —— Leg. agr., 3 De armamentariis.
 —— Leg. agr., 6 De caed. quadruped.
 —— Leg. agr., 7 De arboribus.
 —— Leg. agr., 10 De novis operibus.
 —— Appendix, title 3 De significatione verb.

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(b) **Modern Codes:**—

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III. See also *infra* §§ 997-9; *supra* vol. ii, §§ 557-81.

Personal, praedial, and praetorian servitudes: references. § 996

A. Usufructus, usus, habitatione, operae (personal servitudes):

I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

- GAIUS, ii, 12–42, 86–7.
- PAUL. Sent. 1, 11 De satis-
dando (usufruct).
- ULPIAN, Reg. 19 De dominiis,
etc.
- VATICAN FRAG. 41–93 De
usu fructu.

(b) **Justinian:**

- INST. 2, 1 De rerum divisione,
35–8.
- 2, 2 De rebus incorporeal.
- 2, 4 De usufructu.
- 2, 5 De usu et habitatione.
- 2, 9 Per quas personas
nobis adquiritur, as far
as § 3.
- DIG. 7, 1 De usu fructu, etc.
- 7, 2 De usu fructu ad-
crescendo.
- 7, 3 Quando . . . usus
fructus legati cedat.
- 7, 4 Quibus modis usus
fructus vel usus amittitur.
- 7, 5 De usu fructu earum
. . . quae usu consumun-
tur, etc.

— 7, 6 Si usus fructus
petetur, etc.

— 7, 7 De operis servorum.

— 7, 8 De usu et habitatione.

— 7, 9 Usufructuarius
quemadmodum caveat.

— 8, 1 De servitutibus.

— 8, 6 Quemadmodum ser-
vitutes amittuntur.

— 43, 25 De remissionibus.

CODE, 3, 33 De usufructu et
habitatione et ministerio
servorum.

— 5, 10 Si secundo nup-
serit mulier, etc. (usu-
fruct).

(c) **Post-Justinian:**

- THEOPHILUS, 2, 1 De rerum
divisione, 35–8.
- 2, 2 De rebus corporal.,
etc.
- 2, 4 De usufructu.
- 2, 5 De usu et habitatione.
- 2, 9 Per quas personas . . . adquiritur, as far as § 3.
- BAS. 16, 1 De usufructu.
- 16, 2 De usufructu ac-
crescente.
- 16, 3 Quibus diebus usu-
fructus legatus cedat.
- 16, 4 Quibus modis usu-
fructus amittatur.
- 16, 5 De usufructu re-
rum, quae usu minuuntur.

(§996) — 16, 6 *Si usufructus pertatur, etc.* DIG. 8, 3 *De serv. praed. rustic.*

— 16, 7 *De operis servorum.* — 8, 4 *Communia praed. tam urban. quam rustic.*

— 16, 8 *De usu et habitatione.* — 8, 5 *Si servitus vindicetur, etc.*

— 16, 9 *Usufructuarius quemadmodum caveat.* — 8, 6 *Quemadmodum serv. amittuntur.*

— 44, 5 *De usu . . . et habitatione et operis, etc.* — 39, 1 *De operis novi nuntiatione.*

— 44, 6 *De servitute legata.* — 39, 2 *De . . . suggrundis et projectionibus.*

— 58, 1 *De servitutibus.* — 39, 3 *De aqua et aquae pluviae arcendae.*

HEXABIBLOS, 2, 10 *De . . . usufructu.* — 43, 19 *De itinere, etc.*

B. **Servitudes of land (prædial servitudes):**

I. **Texts of Roman law:—**

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, vii, 1-2, 6-10. GAIUS, iv, 3.

PAUL. Sent. 1, 17 *De servitutibus.*

ULPIAN, Reg. 19 *De dominis, etc.*

CODE THEOD. 15, 2 *De aquaeductu.*

(b) **Justinian:**

INST. 2, 2 *De rebus incorporal.*

— 2, 3 *De servitutibus.*

— 4, 6 *De actionibus, 2.*

DIG. 8, 1 *De servitutibus.*

— 8, 2 *De serv. praed. urban.*

DIG. 8, 3 *De serv. praed. rustic.*

— 8, 4 *Communia praed. tam urban. quam rustic.*

— 8, 5 *Si servitus vindicetur, etc.*

— 8, 6 *Quemadmodum serv. amittuntur.*

— 39, 1 *De operis novi nuntiatione.*

— 39, 2 *De . . . suggrundis et projectionibus.*

— 39, 3 *De aqua et aquae pluviae arcendae.*

— 43, 19 *De itinere, etc.*

— 43, 20 *De aqua cottidiana et aestiva.*

— 43, 21 *De rivis.*

— 43, 22 *De fonte.*

— 43, 25 *De remissionibus.*

— 43, 27 *De arboribus caedendis.*

— 47, 3 *De tigno juncto.*

CODE, 3, 34 *De servitutibus, etc.*

— 8, 10 *De aedificiis privatis.*

— 11, 43 (42) *De aqueductu.*

Nov. 63 *De novi operis nuntiatione marini aspectus.*

— 165 *Generalis . . . de prospectu maris, etc.*

(c) **Post-Justinian:**

THEOPHILUS, 2 2 *De rebus corporal., etc.*

— 2, 3 *De servitutibus.*

— 4, 6 *De actionibus, 2.*

PROCHIRON, 38 De novis operibus.

EPANAGOGA, 39 De novis operibus.

BAS. 44, 6 De servitute legata.

— 58, 1 De servitibus.

— 58, 2 De serv. praed. urban.

— 58, 3 De serv. praed. rustic.

— 58, 4 De commun. praed. tam urban. quam rustic.

— 58, 5 Si servitus vindicetur, etc.

— 58, 6 Quemadmodum serv. amittantur.

— 58, 7 De servitute et aqua.

— 58, 10 De novi operis nunciatione, etc.

— 58, 11 De aedificiis privatis.

— 58, 13 De aqua et aqua pluvia arcenda.

— 58, 14 De interdictis.

— 58, 19 De magnis aquaeductibus.

— 58, 20 De aqua quotidiana et aestiva, et de rivis.

— 58, 21 De fonte.

— 58, 22 De cloacis.

HEXABIBLOS, 2, 4 De novis operibus.

— Leges agrariae, 10 De novis operibus.

C. Praetorian servitudes: (§ 996)

I. Emphyteusis and superficies:

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) Ante-Justinian:

GAIUS, iii, 145.

CODE THEOD. 5, 12 De fundis patrimonial. et saltuensisibus et enphyteuticis, etc.

— 10, 3 De locatione fundorum juris enphyteutici et rei publicae et templorum.

— 11, 19 De collatione fund. patrimonial. vel enphyteuticorum, etc.

(b) Justinian:

INST. 3, 24 De locatione, etc., 3 (emphyteusis).

DIG. 43, 18 De superficiebus.

CODE, 4, 66 De emphyteutico jure.

— 11, 62 (61) De fundis patrimonial. et saltuensis. et emphyteuticis, etc.

— 11, 63 (62) De mancipiis et colonis . . . et salt. et emphyteutic., etc.

— 11, 64 (63) De fugitiv. colonis . . . emphyteuticis, etc.

— 11, 65 (64) De collatione fundorum emphyteutic.

(§996) **Nov.** 55 *Ut . . . liceat per-*
petuam emphyteusin . . .
ecclesia, etc.

Nov. 120 *De alienatione em-*
phyteosi, etc.

(c) **Post-Justinian:**

THEOPHILUS, 3 24 *De loca-*
tione, etc., 3 (emphyteu-
sis).

ECLOGA, 12 *De emphyteusi-*
bus, etc.

PROCIRHON, 15 *De emphy-*
teusi.

EPANAGOGA, 10 *De ecclesiast.*
emphyteusibus.

Bas. 5, 2 *De . . . emphyteusi-*
rerum ecclesiast.

— 20, 2 *De emphyteusi.*

— 58, 18 *De superficiebus.*

HEXABIBLOS, 3, 4 *De em-*
phyteusi.

2. **Fiducia, pignus, hypo-**
theca, and privilegium.

I. **Texts of Roman law:**

For English translations, see
supra §§ 945, 946, 948, 951,
952, 955.

(a) **Ante-Justinian:**

GAIUS ii, 64.

PAUL. *Sent.* 2, 4 *De . . .*
pignore fiduciave.

— 2, 5 *De pignoribus.*

— 2, 13 *De lege commis-*
soria.

COD. HERMOGENIAN. *De pig-*
noribus.

COD. THEOD. 2, 30 *De pig-*
noribus.

— 3, 2 *De commissoria*
rescind.

— 11, 9 *De distrahendis*
pignoribus, etc.

(b) **Justinian:**

INST. 2, 8 *Quibus alienare,*
etc., 1 (hypotheca).

— 4, 6 *De action. 7 (hypotheca).*

DIG. 13, 7 *De pigneratia*
actione, etc.

— 18, 3 *De lege commis-*
soria.

— 20, 1 *De pignoribus et*
hypothecis, etc.

— 20, 2 *In quibus causis*
pignus vel hypotheca tacite
contrahitur.

— 20, 3 *Quae res pignori*
vel hypothecae, etc.

— 20, 4 *Qui potiores in*
pignore vel hypotheca . . .
et . . . qui in prior. credi-
tor. locum succedunt.

— 20, 5 *De distractione*
pignorum et hypothecarum.

— 20, 6 *Quibus modis pig-*
nus vel hypotheca solvitur.

— 43, 25 *De remissionibus.*

— 43, 32 *De migrando.*

— 43, 33 *De Salviano in-*
terdicto.

CODE, 2, 28 (29) *Si adv. vend.*
pignoris.

— 4, 24 *De actione pig-*
neratia.

- 4, 51 De . . . prohibita rerum . . . hypotheca.
- 7, 8 De servo pignori dato, etc.
- 7, 73 De privilegio fisci.
- 7, 74 De privilegio dotis.
- 8, 9 De . . . Salviano interdicto.
- 8, 13 (14) De pignoribus.
- 8, 14 (15) In quibus causis pignus tacite contrahitur.
- 8, 15 (16) Si aliena res pignori data sit.
- 8, 16 (17) Quae res pignori obligari possunt, etc.
- 8, 17 (18) Qui potiores in pignore, etc.
- 8, 18 (19) . . . Qui in prior. creditor. locum succedunt.
- 8, 19 (20) Si antiquior creditor pignus vend.
- 8, 20 (21) Si communis res pignorata, etc.
- 8, 21 (22) De praetorio pignore, etc.
- 8, 22 (23) Si in causa judicati pignus, etc.
- 8, 23 (24) Si pignus pignori datum, etc.
- 8, 24 (25) De partu pignoris, etc.
- 8, 25 (26) De remissione pignoris.
- 8, 26 (27) Etiam ob chirograph. pecuniam pignus, etc.
- 8, 27 (28) De distrac- (§ 996) tione pignorum.
- 8, 28 (29) Debitor. vend. pignorum, etc.
- 8, 29 (30) Si vendito pignore agatur.
- 8, 30 (31) De luitione pignoris.
- 8, 31 (32) Si unus ex pluribus heredibus creditor. vel debitor. partem suam debiti solverit vel acceperit.
- 8, 32 (33) Si pignoris conventionem, etc.
- 8, 33 (34) De jure domini impetrando.
- 8, 34 (35) De pactis pignorum et de commissoria lege . . . rescind.
- 8, 44 (45) De evictionibus.
- 8, 45 (46) Creditor. eviction. non debere.
- Nov. 7 De . . . ecclesiast. rebus . . . in specialem hypothecam, etc.
- 52 Ut non fiant pignorations pro aliis personis, etc.
- 120 De . . . hypothecis, etc.

(c) **Post-Justinian:**

- THEOPHILUS**, 2, 8 Quibus alienare, 1.
- 4, 6 De action., 7.
- ECLOGA**, 10 De . . . pignoribus, etc.

(§996) PROCHIRON, 16 . . . De pignore.

EPANAGOGA, 28 De . . . pignore.

BAS. 10, 11 Si adv. vend. pignorum.

— 19, 3 De lege commissoria, etc.

— 19, 8 De . . . prohibita rerum . . . hypotheca, etc.

— 25, 1 De pigneratitia actione.

— 25, 2 De pignoribus et hypothecis, etc.

— 25, 3 In quibus causis pignora vel hypothecae tacite contrahantur.

— 25, 4 Quae res pignori vel hypothecae, etc.

— 25, 5 Qui potiores in pignoribus vel hypothecis . . . et . . . qui in prior. creditor. locum succedunt.

— 25, 6 Quomodo et quando militiae pignori, etc.

— 25, 7 De distractione pignorum et hypothecarum.

— 25, 8 Quibus modis pignus vel hypotheca solvatur.

HEXABIBLOS, 3, 5 De . . . pignore.

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I. Modern references:—

(a) **In general:**

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of user, 13 Columbia Law Rev., p. 409.

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AMOS, Roman law, pp. 148-54, 174.

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MACKENZIE, Roman law⁷, pp. 182-93, 228.

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AUSTRIA, 472–530.

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FRANCE, 578–710, 2073–2203.

GERMANY, 581–7, 1012–1296.

ITALY, 476–672, 1556–67, 1948–2053.

JAPAN, 265–398.

LOUISIANA, 533–869, 3182–3411.

MEXICO, 865–1058, 1773–1964, 3066–3150.

PHILIPPINES (same as Spain: but see Willard, Notes to Spanish Code, Manila, 1904).

PORTO RICO, 469–615, 1758–1830.

QUEBEC, 443–582, 1966–2182.

RUSSIA, 433–51, 1587–1678.

SPAIN, 467–608, 1857–1929.

SWITZERLAND, 667–712, 730–918.

II. **See also** *infra* § 1024; *supra* vol. ii, §§ 582–624, 763, 939.

§ 997 **Occupancy, accession, delivery, and adjudication: references.**

A. **Occupancy:**

I. **Texts of Roman law:**—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

GAIUS, ii, 65–9, 72.

COD. THEOD. 10, 18 De thesauris.

— 15, 11 De venatione ferarum.

(b) **Justinian:**

INST. 2, 1 De rerum divisione, 11–19, 22, 39, 47–8.

DIG. 41, 1 De adquirendo rerum dominio.

CODE, 10, 15 De thesauris.

— 11, 45 (44) De venatione ferarum.

(c) **Post-Justinian:**

THEOPHILUS, 2 1 De rerum divisione, 11–19, 22, 39, 47–8.

BAS. 50, 1 De dominio ex variis modis, etc.

HEXABIBLOS, 2, 6 De . . . inventione thesauri.

B. **Accession:**

I. **Texts of Roman law:**—

For Eng. transl., see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, vi, 7–9.

OCCUPANCY, ACCESSION, DELIVERY, ADJUD. 135

CAIUS, 2, 71-78.

NOV. THEOD. 20 De adlu-
vionibus.

(b) **Justinian:**

INST. 2, 1 De rerum divisione,
20-34.

DIG. 22, 1 De usuris et
fructibus . . . et . . . ac-
cession., etc.

— 41, 1 De adq. rerum
dominio.

— 43, 28 De glande legenda.
CODE, 6 47 De usuris et fruc-
tibus, etc.

— 7, 41 De adluvion., etc.

(c) **Post-Justinian:**

THEOPHILUS, 2, 1 De rerum
divisione, 20-34.

BAS. 50, 1 De dominio ex
variis modis, etc.

— 50, 16 De alluvione.

HEXABIBLOS, 2, 1 De . . .
dominio.

C. **Delivery (traditio):**

I. **Texts of Roman law:** —

For Eng. transl., see supra §§
945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, vi, 10.

ULPIAN, Reg. 19 De . . . ad-
quisition. rerum.

(b) **Justinian:**

INST. 2, 1 De rerum divisione,
40-41, 44-6.

DIG. 41, 1 De adquirendo rer. (§ 997)
dominio.

(c) **Post-Justinian:**

THEOPHILUS, 2, 1 De rer.
divisione, 40-41, 44-6.

BAS. 50, 1 De dominio ex
variis modis, etc.

D. **Adjudication:**

I. **Texts of Roman law:** —

For Eng. transl., see supra
§§ 945, 946, 948, 951, 952,
955.

(a) **Ante-Justinian:**

XII TABLES, vii, 5; xii, 3.

PAUL. Sent. 1, 16 Finium
regundorum.

— 1, 18 De familiae hercis-
cundae.

ULPIAN, Reg. 19 De . . . ad-
quisition. rerum.

COD. GREGORIAN. 3 De fam-
iliae herciscundae et com-
muni dividundo.

COD. THEOD. 2, 24 De fam-
iliae erciscundae.

— 2, 25 De communi divi-
dundo.

— 2, 26 De finium regun-
dorum.

(b) **Justinian:**

INST. 4, 17 De officio judicis,
4-7.

DIG. 10, 1 Finium regundo-
rum.

(§997) — 10, 2 Familiae erciscundae.
 — 10, 3 Communi dividundo.
CODE, 3 36 Familiae erciscundae.
 — 3, 37 Communi dividundo.
 — 3, 38 Communia . . . familiae erciscundae quam communi dividundo.
 — 3, 39 Finium regund.
 — 6, 59 Communia de successionibus.

(c) **Post-Justinian:**

THEOPHILUS, 4, 17 De officio judicis, 4-7.
BAS. 12, 2 De rerum communium divisione.
 — 12, 3 Communia . . . familiae erciscundae quam communi dividundo.
 — 42, 3 Familiae erciscundae.
 — 58, 9 De finibus regund.

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I. Modern References:—

(a) **In general:**

AMOS, Roman law, pp. 160-7.
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COLQUHOUN, *Rom. law*, §§965-1001.
FOSTER v. WRIGHT, L. R. 4 C. P. Div., 438.
HINDSON v. ASHBY, 2 Ch. Rep. (1894), 1.
GERVAIS, *De la condition légale des lapins de garènes, des poissons d'étangs et des pigeons de colombiers*, 33 *Revue gén. du droit*, p. 193.
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HUNTER, *Roman law*⁴, pp. 255, 274, 282, 988.
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(b) **Modern Codes:**

References are to the Civil Code, unless otherwise stated.

ARGENTINA, 2540–644.

AUSTRIA, 380–446.

CHILE, 606–99.

FRANCE, 544–77, 1604–24.

GERMANY, 929–84.

ITALY, 436–75, 711–19.

JAPAN, 239–48.

LOUISIANA, 499–532, 2477–90.

MEXICO, 729–821, 2851–72.

PHILIPPINES (same as Spain, but see Willard, *Notes to Spanish code*, pp. 36, 84).

PORTO RICO, 360–91, 1365–76.

QUEBEC, 583–95, 1492–1505.

RUSSIA, 699–706.

SPAIN, 353–406, 1462–73.

SWITZERLAND, 642–54, 657–64, 714–27.

II. *See also* supra § 995; vol. ii, §§ 625–44.

Prescription: references.

§ 998

I. **Texts of Roman law:**—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, vi, 3 and 5; vii, 4, 6–8; viii, 17; x, 11.

GAIUS, ii, 43–61.

PAUL. Sent. 1, 17 *De servitutibus*.

— 5, 2 *De usucapione*.

ULPIAN, Reg. 19. *De dominiis, etc.*

COD. THEOD. 2, 6. *De temporum cursu, etc.*

— 4, 11 *De longi temporis praescriptione.*

— 4, 14 *De actionibus certo tempore finiendis.*

— 4, 15 *De quinquennii praescriptione.*

Nov. THEOD. *De amota milit. fori praescriptione.*

(§998) **Nov. VALENTINIAN.** 27 *De usucaption. pro xxx ann. praescriptione, etc.*

— 7, 29 *De usucaption. pro herede.*

— 7, 30 *Communia de usucaption.*

— 7, 31 *De usucaption. transform., etc.*

— 7, 32 *De adq. et retin. possession.*

— 7, 33 *De praescriptione . . . x vel xx ann.*

— 7, 34 *In quibus causis cessat . . . praescritio.*

— 7, 35 *Quibus non obicitur . . . praescritio.*

— 7, 36 *Adv. creditor.*

— 7, 37 *De quadrennii praescritio.*

— 7, 38 *Ne rei domenicae vel templorum vindicatio temporis exceptione submoveatur.*

— 7, 39 *De praescription. xxx vel xl ann.*

— 7, 40 *De . . . praescritio. et interruption.*

— 8, 6 *Uti possidetis.*

Nov. 9 *Ut ecclesia Romana centum ann. habeat praescritio.*

— 111 *Haec const. innovat. const. quae praescritio. centum ann. . . dederat.*

EDICTA (appendix to Nov.) 5.

(c) **Post-Justinian:**

THEOPHILUS, 2, 6 *De ususcaption. et longi temporis praescritio.*

BAS. 10, 18 Si adv. usucaption.
 —— 44, 25 De possession. et usucaption., etc.
 —— 45, 6 De Armeniis, et . . . Rom. leges sequantur.
 —— 48, 24 De long. temp. praescription., etc.
 —— 50, 3 De usurpation. et possession.
 —— 50, 4 Pro emtore.
 —— 50, 5 Pro . . . bonorum possessore.
 —— 50, 6 De donatis.
 —— 50, 8 De dote.
 —— 50, 9 De rebus . . . pro suis, etc.
 —— 50, 10 De dominio per usum non acq. communiter.
 —— 50, 11 De praescription. . . x vel xx ann.
 —— 50, 12 In quibus causis cesseret . . . praescriptis, etc.
 —— 50, 13 De quadrennii praescriptione, etc.
 —— 50, 14 Adv. creditor.; et de praescription. xxx vel xl ann.
 —— 50, 15 De . . . diversis . . . praescriptio. et interrup.
 —— 51, 3 De diversis . . . praescriptio., etc.
 —— 53, 3 De naufragio, etc.
 —— 58, 17 Interdict. ad retin. possession.
 —— 58, 23 Quod vi aut clam.
 HEXABIBLOS, 1, 3 De action. et temporibus.
 —— 2, 1 De . . . dominio.

II. Modern references:— (1909)

(a) **In general:**

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MACKENZIE, Roman law⁷, pp. 194-203.

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PETIT, Droit romain⁷, §§ 197-212.

POSTE, Gaius⁴, pp. 132-57.

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— System, vol. iv, §§ 177—203, appendix 2; vol. v, §§ 231—55; vol. viii, §§ 390—91.

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(b) **Modern Codes:**

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CHILE, 2492—524.

FRANCE, 2219—81.

GERMANY, 186—225.

ITALY, 2105—47.

JAPAN, 144—74.

LOUISIANA, 3457—3555.

MEXICO, 1059—1129.

PHILIPPINES (same as Spain, but see Willard, Notes on Spanish Code, pp. 83—4, Manila, 1904).

PORTO RICO, 1831—76.

QUEBEC, 2201—70.

RUSSIA, 557—67.

SPAIN, 1930—75.

SWITZERLAND, 661—4, 728.

III. See also *supra* §995; vol. ii, §§ 645—56.

§ 999 Gift: references.

I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

GAIUS, ii, 228.

PAUL. Sent. 3, 7 *De mortis causa* donation.

— 5, 11 *De donation.*

ULPIAN, Reg. 15 *De decimis.*

COD. GREGORIAN. 13 *De donation.*, etc.

COD. HERMOGENIAN. *De donation.*

COD. THEOD. 2, 20 *De inofficiosis donation.*

— 8, 12 *De donation.*

— 8, 13 *De revocandis don.*

NOV. LEO and **SEVERUS**, 1.

NOV. VALENTINIAN. 32 *De confirmandis donata.*, etc.

VATICAN FRAG. 248—59

Quando donator intellegatur revocasse voluntatem.

— 260—316 *Ad legem Cin- ciam de donation.*

(b) **Justinian:**

INST. 2, 7 *De donation.*

— 2, 22 *De lege Falcidia*, 1.

DIG. 37, 7 *De dotis collatione.*

— 39, 5 *De donation.*

— 39, 6 *De mortis causa donation.*

— 41, 6 *Pro donato.*

CODE, 2, 29 (30) *Si adv. dona- tion.*

— 3, 29 De inofficiosis donatione.

— 5, 16 De donation. inter vir. et uxor. et a parent. in liberos, etc.

— 7, 27 De usucaption. pro donato.

— 8, 53 (54) De donation.

— 8, 54 (55) De donation . . . sub modo, etc.

— 8, 56 (57) De mortis causa donation.

Nov. 52 Ut . . . neque a privatis in imperator. faciae donationes indigeant.

— 73 De instrument., etc.

— 87 De mortis causa donation., etc.

— 162 Sacra forma transmissa dominico, etc., 1.

(c) **Post-Justinian:**

THEOPHILUS, 2, 7 De donation.

— 2, 22 De lege Falcidia, 1.

ECLOGA, 4 De donation., etc.

PROCHIRON, 12 De donation.

— 13 De revocandis donation.

EPANAGOGA, 22 De revocandis donation.

BAS. 10, 12 Si adv. donation.

— 19, 14 De fundo sine pub. tributis . . . donando.

— 41, 5 De immensis donation. in liberos collatis.

— 47, 1 De donation. inter vivos.

— 47, 2 De revocation. don. (§999)

— 47, 3 De mortis causa donation.

— 50, 6 De donatis.

— 60, 42 De iis, quibus ut indignis relicta, etc.

HEXABIBLOS, 3, 1 De don.

— 3, 2 De revoc. donation.

II. Modern references:

(a) **In general:**

AMOS, Roman law, pp. 335.

BRISSAUD (Howell), Hist. of French priv. law, pp. 675, 684, 703, Boston, 1912.

COCHRANE *v.* MOORE, L. R. 25 Q. B. Div., 57.

COLQUHOUN, Roman law, §§ 1050-75.

DUQUESNE, *Donatio*, etc. (Mélanges P. F. Girard, vol. i, p. 389, Paris, 1912).

FENNER, An example of Homeric nodding in relation to the reduction of donations inter vivos, 1 So. Law Qt., p. 129.

GAVET, *De l'allegatio gestis* (Mélanges P. F. Girard, vol. i, p. 499).

GIRARD, *Droit romain*⁵, pp. 935-49.

HUNTER, Roman law⁶, pp. 318, 915.

MACKELDEY (Dropsie), Roman Law¹⁴, §§ 463-9.

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MONNIER, *La Novelle* 50
de Leon la Sage et l'insinuation des donations (Mélanges P. F. Girard, vol. ii, p. 236).

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POSTE, *Gaius*⁴, p. 367.

RICCOBONO, *La forma delle donazione, etc.* (Mélanges P. F. Girard, vol. ii, p. 415).

ROBY, *Rom. priv. law*, vol. i, p. 525.

SAVIGNY, *System*, vol. iv, §§ 142–76, appendices 9 and 10.

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(b) **Modern Codes:**
References are to the Civil

Code, unless otherwise stated.

ARGENTINA, 1823–1902.

AUSTRIA, 938–56.

CHILE, 953, 1136–46, 1386–1436.

FRANCE, 711, 893–1100.

GERMANY, 516–34.

ITALY, 710, 1050–96.

JAPAN, 549–54.

LOUISIANA, 1467–1570, 1734–55.

MEXICO, 2594–2660.

PHILIPPINES, 618–56.

PORTO RICO, 625–64.

QUEBEC, 754–830.

RUSSIA, 967–93.

SPAIN, 618–56.

SWITZERLAND (Code of Obligations, 239–52).

III. See also *supra* § 988; vol. ii, §§ 477–80, 657–60.

§ 1000 Inheritance and intestate succession: references.

I. **Texts of Roman law:**—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, v, 4–5, 8–10.

GAIUS, i, 156; ii, 97–100, 152–73; iii, 1–85.

PAULUS, *Sent.* 1, 11 *De satis-*
dando.

— 1, 13b *Si hereditas . . .*
petatur.

— 3, 1 *De Carboniano*
edicto.

— 3, 1a (*bonorum pos-*
sessio).

— 3, 2 *De bonis liberti.*

— 3, 3 *De lege Fabiana.*

— 3, 5 *Ad SC. Silianum.*

— 4, 4 *De repudiando here-*
ditate.

- 4, 8 De intestatorum successione.
- 4, 9 Ad SC. Tertullianum.
- 4, 10 (on intestacy).
- 4, 11 De gradibus.
- 5, 12 De jure fisci, etc.
- ULPIAN,** Reg. 15 De decimis.
- 17, De caducis.
- 18, Qui habeant jus antiquum in caducis.
- 26, De legitimis heredibus.
- 27, De libertorum succession.
- 28, De possessionibus dandis.
- 29, De bonis libertorum.
- COD. GREGORIAN.** 2, 17 Si ut se hereditate, etc.
- COD. HERMOGENIAN.** De successionibus.
- COD. THEOD.** 2, 22 De hereditatis petitione.
- 4, 1 De creatione vel bonorum possessione.
- 4, 2 Unde liberi.
- 4, 3 De Carboniano edicto.
- 4, 6 De natural. filiis et matribus.
- 4, 21 Quorum bonorum.
- 5, 1 De legitimis hereditatis.
- 5, 2 De decurion.
- 5, 3 De clericorum, etc.
- 5, 6 De bonis militum.
- 8, 16 De infirmandis poenis caelibatus et orbitatis.
- 8, 17 De jure liberorum. (\$1000)
- 10, 8 De bonis vacantibus.
- 10, 9 De incorporatione.
- COLL. MOSAIC. ET ROM.** 16 De legitima successione.
- Nov. ANTHEMIUS,** 3 De bonis vacantibus.
- Nov. MARJORIAN.** 5 De bonis caducis, etc.
- 6 De sanctimonialibus vel viduis et de succession. earum.
- Nov. VALENTINIAN.** 3 De succession. curial. qui ad clericatum, etc.
- 14 De fructibus inter maritum et uxorem expensis filii vel hered. non imputandis.
- 25 De libertis et succession.
- (b) **Justinian:**
- INST.** 1, 15 De legit. adgnatorum, etc.
- 2, 9 Per quas personas, etc., 6.
- 2, 19 De heredum qualitate et differentia.
- 3, 1 De hereditatibus . . . ab intestato, etc.
- 3, 2 De legit. adgnatorum successione.
- 3, 3 De SC. Tertulliano.
- 3, 4 De SC. Orphitiano.
- 3, 5 De successione cognat.
- 3, 6 De gradibus cognat.

(§ 1000) —— 3, 7 *De successione libertorum.*

—— 3, 8 *De adsignatione libertorum.*

—— 3, 9 *De bonorum possessionibus.*

DIG. 5, 3 *De hereditatis petitione.*

—— 5, 4 *Si pars hereditatis petatur.*

—— 5, 5 *De possessoria hered. petitione.*

—— 11, 7 *De religiosis et sumptibus funerum, etc.*

—— 11, 8 *De mortuo inferendo et sepulchro aedificando.*

—— 25, 4 *De . . . ventre custodiendoque partu.*

—— 25, 6 *Si mulier ventris, etc.*

—— 28, 8 *De jure deliberandi.*

—— 29, 2 *De adq. vel omit. hereditate.*

—— 29, 4 *Si quis omissa causa testamenti ab intestato possideat hered.*

—— 29, 5 *De SC. Siliano, etc.*

—— 37, 1 *De bonorum possessionibus.*

—— 37, 2 *Si tabulae testamenti extabunt.*

—— 37, 3 *De bonorum possessione furioso, etc.*

—— 37, 4 *De bonorum poss. contra tabulas.*

—— 37, 5 *De legatis praestandis contra tabulas bon. poss. petita.*

—— 37, 6 *De collatione bonorum.*

—— 37, 7 *De dotis collatione.*

—— 37, 8 *De conjungendis cum emancipato liberis.*

—— 37, 9 *De ventre in possession. mittendo, etc.*

—— 37, 10 *De Carboniano edicto.*

—— 37, 11 *De bonorum possessione secundum tabulas.*

—— 37, 12 *Si a parente quis manumissus, etc.*

—— 37, 13 *De bonorum possessione ex testament militis.*

—— 37, 14 *De jure patronatus.*

—— 37, 15 *De obsequiis parentibus et patron. etc.*

—— 38, 1-5 *are on succession to freedmen.*

—— 38, 6 *Si . . . unde liberi.*

—— 38, 7 *Unde legitimi.*

—— 38, 8 *Unde cognati.*

—— 38, 9 *De successorio edicto.*

—— 38, 10 *De gradibus, etc.*

—— 38, 11 *Unde vir et uxor.*

—— 38, 12 *De veteran. et militum successione.*

—— 38, 15 *Quis ordo in possessionibus, etc.*

—— 38, 16 *De suis et legitimis heredibus.*

—— 38, 17 *Ad SC. Tertullianum et Orphitanum.*

—— 41, 5 *Pro herede vel pro possessore.*

- 42, 5 De separationibus.
- 47, 19 Expilatae hereditatis.
- 47, 23 De popular. action.
- CODE, 2, 38 (39) Si ut se hereditate abstineat.
- 2, 39 (40) Si ut omissam hereditatem, etc.
- 3, 20 Ubi de hereditate agatur.
- 3, 31 De petition. hered.
- 3, 44 De relig. et sumptibus funerum.
- 4, 11 Ut actiones et ab herede et contra heredem incipient.
- 4, 12 Ne uxor pro marito, vel marit. pro ux. vel mater pro filio, etc.
- 4, 16 De action. hered.
- 4, 17 Ex delictis defunctorum in quantum heredes convenientur.
- 4, 39 De hered. vel action. vendita.
- 6, 9 Qui admitti ad bonorum possessionem, etc.
- 6, 10 Quando non petentium partes . . . ad crescunt.
- 6, 14 Unde liberi.
- 6, 15 Unde legitimi.
- 6, 16 De edicto successorio.
- 6, 17 De Carboniano edicto.
- 6, 18 Unde vir et uxor.
- 6, 19 De repud. bonorum possessione.
- 6, 20 De collationibus. (§ 1000)
- 6, 27 De necessariis et servis heredibus, etc.
- 6, 30 De jure deliberandi et de adeunda . . . hered.
- 6, 31 De repud. vel abstinentia hered.
- 6, 35 . . . ad SC. Silianum.
- 6, 48 De incertis personis.
- 6, 51 De caducis tollendis.
- 6, 52 De his qui ante apertas tabulas hered. transmittunt.
- 6, 55 De suis et legitimis liberis et ex filia nepotibus ab intestato, etc.
- 6, 56 Ad SC. Tertulianum.
- 6, 57 Ad SC. Orfitianum.
- 6, 58 De legit. heredibus.
- 6, 59 Communia de successionibus.
- 6, 60 De bonis maternis, etc.
- 6, 61 De bonis quae liberi in postestate constitutis, etc.
- 6, 62 De hereditat. decurionum, naviculariorum, etc.
- 7, 29 De usucapione pro herede.
- 7, 72 . . . de separationibus.
- 8, 2 Quorum bonorum.
- 8, 57 (58) De infirmandis poenis caelibatus et orbitatis, etc.

(§1000) —— 10, 10 *De bonis vacanti-bus, etc.*

—— 10, 13 *De his qui se deferunt.*

—— 10, 14 *Si liberalitatis imperial. socius sine herede, etc.*

—— 10, 35 (34) *Quando et quibus debetur quarta para decurion., etc.*

—— 10, 63 (61) *De periculo successorum parentis.*

Nov. 2 *De non eligendo se-cundo nubentes mulieres . . . et de succession. earum filiis suis.*

—— 18 *De triente et semisse et succession. filiorum et nepotum naturalium vel col-lation., etc.*

—— 21 *De Armeniis ut ipsi . . . sequantur Romanorum leges.*

—— 36 *Ut hi qui in Africa, etc.*

—— 68 *Ut constitutio . . . quae in successionibus in lucra nuptialia ex orbitatis, etc.*

—— 89 *Quibus modis natur-ales efficiuntur sui.*

—— 101 *De donationibus a curialibus factis suis, etc.*

—— 118 *De heredibus ab intestato venientibus et de agnatorum jure sublato.*

—— 127 *De fratribus filiis succendentibus una cum as-cendentibus, etc.*

—— 131 *De ecclesiasticis ti-tulis.*

—— 158 *Ut deliberandi jus . . . transmittatur.*

—— 164 *De hereditatibus.*

EDICTA (in appendix to Nov.)

3 *De Armeniorum suc-cessione.*

(c) **Post-Justinian:**

THEOPHLUS, i, 15; 11, 9, §6; ii, 19; iii, 1-9. The titles of these are the same as supra (b), INST. 1, 15-3, 9.

PROCHIRON, 30 *De heredibus.*

—— 37 *De tempore quo cre-ditores adv. heredes, etc.*

EPANAGOGA, 33 *De heredibus.*

—— 35 *De temporibus quibus creditores adv. heredes de-functi, etc.*

BAS. 9, 6 *Quibus ex causis in possession. mittantur.*

—— 9, 7, 38-44 on separatio bonorum.

—— 10, 21 *Si quis se heredi-tate abstineat.*

—— 10, 22 *Si quis hered. cer-tam vel bonorum posses-sionem . . . omiserit.*

—— 15, 4 *De rebus exhiben-dis, etc.*

—— 24, 7 *De action. hered. et in quantum heredes ten-eantur ex delictis defunc-torum.*

—— 31, 8 *Si mulier ventris, etc.*

- 31, 9 Si mulier ventris, etc.
- 35, 2 De conditional. institutionibus.
- 35, 14 . . . de bonorum possessione.
- 35, 15 Si quis omissa causa testamenti ab intestato hered. possideat.
- 35, 17 De bonorum poss. secundum tabulas.
- 35, 18 Ut deliberandi jus . . . transmit.
- 40, 1 De bonorum possessione proprie sumta.
- 40, 2 De bonorum possessione furiosi, etc.
- 40, 3 De bonorum poss. contra tabulas.
- 40, 4 De conjungendo cum emancipato filio, etc.
- 40, 5 De Carboniano edicto, etc.
- 40, 6 Si a parent. quis emancipatus, etc.
- 40, 7 . . . et de bon. poss. secundum tabulas et de bon. poss. libertorum.
- 40, 8 De repud. bonorum possessionem et unde legitimi.
- 40, 9 De bonorum possessione et de petitione hereditatis.
- 41, 6 De jure jurando, . . . defunctus substantiae, etc.
- 41, 7 De collatione bonorum.
- 42, 1 De petitione hered., (§ 1000) etc.
- 42, 2 Si pars hereditatis petatur, et de possessoria, etc.
- 44, 29 Quod non dictator liberis orbatus, etc.
- 45, 1 De successione ab intestato cognatorum.
- 45, 2 Actio, quam lex dat cognatis.
- 45, 3 De gradibus cognatorum, . . . et quod ex aequo succedant per virilem et femininum sexum cognati.
- 45, 5 Actio, per quam vir vel uxor, si cognati non sint, sibi invicem succedunt.
- 45, 6 De Armeniis, ut . . . Roman. leges sequantur.
- 50, 5 De herede aut bonorum possessore.
- 60, 29 De expilata hereditate.
- HEXABIBLOS, 5, 8 De heredibus.
- 5, 13 (12) Quo tempore creditores adv. defuncti heredes agere possunt.

II. Modern references:—

(a) In general:

AMOS, Roman law, pp. 308 et seq.

BALLANTINE, Our grotesque inheritance laws, 25 Green Bag, 253.

(§ 1000) BRISSAUD (Howell), *Hist. of French private law*, pp. 626-57.

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GIRARD, *Manuel de droit romain*⁵, pp. 842-51.

HUNTER, *Roman law*⁴, pp. 830-74.

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SCHUSTER, *German civil law*, §§ 468 et seq.

SOHM (Ledlie³), *Roman law*, pp. 502-39.

THOMPSON, *The right of the adopted child in int. succession*, 2 *Am. Bar Ass'n Journal*, p. 135.

(b) **Modern Codes:**

References are to the Civil Code, unless otherwise stated.

ARGENTINA, 3313-3624.

AUSTRIA, 531-51, 727-61, 797-824.

CHILE, 980-98, 1222-69.

FRANCE, 718-892.

GERMANY, 1922-2063.

ITALY, 720-58, 923-1049.

JAPAN, 964-1059.

LOUISIANA, 870-1464.

MEXICO, 3571-3702.

PHILIPPINES, 912-1087. (But see WILLARD, *Notes to Spanish Civil Code*, pp. 59-66, Manila, 1904.)

PORTO RICO, 886-1054.

QUEBEC, 596-751.

RUSSIA, 1104-1373.

SPAIN, 912-1087.

SWITZERLAND, 457-66, 537-640.

III. *See also* *infra* § 1001; *supra* vol. ii, §§ 661-77.

Wills, legacies, trusts (*fideicomissa*), and codicils: refer- § 1001 references.

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) Ante-Justinian:

XII TABLES, v, 3, 9–10.

GAIUS, ii, 115–289.

PAULUS, Sent. 3, 4a De testamentis.

— 3, 4b De institutione heredum.
— 3, 5a (codicils).
— 3, 6 De legatis.
— 3, 8 Ad legem Falcidiam.
— 3, 9(legacy and fideicom.).
— 4, 1 De fideicommissis.
— 4, 2 De SC. Trebelliano.
— 4, 3 De SC. Pegasiano.
— 4, 5 De inofficiosi querela.

— 4, 7 De lege Cornelia.
— 4, 13 De fideicom. liberatibus.
— 5, 12 De jure fisci, etc.
— 5, 25 Ad legem Cornelianam testamentariam.
ULPIAN, Reg. 17 De caducis.
— 18 Qui habeant jus antiquum in caducis.
— 20 De testamentis.
— 21 Quemadmodum heres instituti debeant.
— 22 Qui heredes instituti possunt.

— 23 Quemadmodum testamenta rumpuntur.

— 24 De legatis.

— 25 De fideicommissis.

COD. GREGORIAN. 2 De inofficio testamento.

COD. HERMOGENIAN. De successionibus.

— De testamentis.

COD. THEOD. 2, 19 De inofficio testamento.

— 2, 20 De inoffic. donation.

— 2, 21 De inoffic. dotibus.

— 4, 4 De testamentis et codicillis.

— 6, 22 De honorariis codicillis.

NOV. MARCIAN. 5 De testamentis clericorum.

NOV. THEOD. 16 De testamentis.

NOV. VALENTINIAN. 21 De testamentis.

(b) Justinian:

INST. 2, 7 De donation., 1.

— 2, 9 Per quas personas, etc. 6.

— 2, 10 De testamentis ordinandis.

— 2, 11 De militari testamento.

— 2, 12 Quibus non est permissum testamenta facere.

— 2, 13 De exheredatione liberorum.

(§ 1001) — 2, 14 De heredibus instituendis.

— 2, 15 De vulgari substitutione.

— 2, 16 De pupillari substitutione.

— 2, 17 Quibus modis testamenta infirmantur.

— 2, 18 De inofficioso testamento.

— 2, 19 De heredum qualitate et differentia.

— 2, 20 De legatis.

— 2, 21 De ademptione legatorum.

— 2, 22 De lege Falcidia.

— 2, 23 De fideicommissariis hereditatibus.

— 2, 24 De singulis rebus per fideicommissum relictis.

— 2, 25 De codicillis.

DIG. 5, 2 De inofficioso testamento.

— 5, 6 De fideicom. hered. petitione.

— 28, 1 Qui testamenta facere possunt et quemadmodum, etc.

— 28, 2 De liberis et postumis heredibus inst. vel exhered.

— 28, 3 De injusto rupto irrito facto testamento.

— 28, 4 De his quae in testamento delentur induc. vel inscribuntur.

— 28, 5 De heredibus instituendis.

— 28, 6 De vulgari et pupillari substitutione.

— 28, 7 De condicionibus institutionum.

— 28, 8 De jure deliberandi.

— 29, 1 De testamento militis.

— 29, 2 De adquir. vel omit. hereditate.

— 29, 3 Testamenta quemadmodum aperiantur, etc.

— 29, 4 Si quis omissa causa testamenti ab intestato . . . possideat hereditatem.

— 29, 5 De SC. Siliano et Claudio; quorum testamenta ne aperiantur.

— 29, 6 Si quis aliquem testari prohibuerit, etc.

— 29, 7 Je jure codicillorum.

— 30 De legatis et fideicommissis.

— 31 De legatis et fideicommissis.

— 32 De legatis et fideicommissis.

— 33, 1 De annuis legatis et fideicommissis.

— 33, 2 De usu et usu fructu et reditu . . . per legatum vel fideicom. datis.

— 33, 3 De servitute legata.

— 33, 4 De dote praelegata,

— 33, 5 De optione vel electione legata.

— 33, 6 De tritico vino vel oleo legata.

- 33, 7 De instructo instrumento legato.
- 33, 8 De peculio legato.
- 33, 9 De penu legata.
- 33, 10 De suppellectile legata.
- 34, 1 De alimentis . . . legatis.
- 34, 2 De auro argento . . . veste . . . et statuis legatis.
- 34, 3 De liberatione legata.
- 34, 4 De adimendis vel transfer. legatis vel fideicommissis.
- 34, 5 De rebus dubiis.
- 34, 6 De his quae poenae causa relinq.
- 34, 7 De regula Catoniaca.
- 34, 8 De his quae pron scriptis habentur.
- 34, 9 De his quae ut indignis auferuntur.
- 35, 1 De condicionibus et . . . demonstration. . . . quae in testamentis, etc.
- 35, 2 Ad legem Falcidiam.
- 35, 3 Si cui plus, quam per legem Falcidiam lic., legatum, etc.
- 36, 1 Ad SC. Trebelianum.
- 36, 2 Quando dies legatorum vel fideicommissorum cedat.
- 36, 3 Ut legatorum seu fideicom. servand. *causa* (1001) caveatur.
- 36, 4 Ut in possession. legatorum vel fideicom. servand. *causa esse liceat*.
- 37, 2 Si tabulas testamenti extabunt.
- 37, 4 De bonorum possessio contra tabulas.
- 37, 5 De legatis praestandis contra tabulas bon. poss. petita.
- 37, 11 De bonorum possessione secundum tabulas.
- 37, 13 De bonorum poss. ex testamento militis.
- 40, 5 De fideicom. libertatibus.
- 41, 8 Pro legato.
- 43, 3 Quod legatum.
- 43, 5 De tabulis exhiben dis.
- 47, 4 Si quis, qui testamento liber esse jussus . . . post mortem domini ante aditam hered. subripuisse, etc.
- 50, 16 De verborum significatione.
- CODE, 3, 17 Ubi fideicom. peti oportet.
- 3, 28 De inofficii testamento.
- 3, 29 De inoffic. donation.
- 3, 30 De inoffic. dotibus.
- 6, 11 De bonorum poss. secundum tabulas.
- 6, 12 De bonorum poss. contra tabulas.

(§ 1001) — 6, 13 De bonorum poss. contra tabulas liberti, etc.

— 6, 21 De testamento militis.

— 6, 22 Qui facere testamentum possunt, etc.

— 6, 23 De testamentis, quemadmodum . . . ordinantur.

— 6, 24 De heredibus instituendis, etc.

— 6, 25 De instituendis vel substitutionibus, etc.

— 6, 26 De impuberum et de aliis substitutioni.

— 6, 27 De necessariis et . . . inst. vel substitutioni.

— 6, 28 De liberis praeteritis vel exheredatis.

— 6, 33 De edicto divi Hadriani tollendo et quemad. scriptus heres in possession. mitt.

— 6, 34 Si quis alium testari prohibuerit, etc.

— 6, 36 De codicillis.

— 6, 37 De legatis.

— 6, 38 De verborum et rerum significatione.

— 6, 39 Si omissa sit causa testamenti.

— 6, 40 De indicta viduitate et de lege Julia miscella tollendo.

— 6, 41 De his quae poenae nomine in testamentis vel codicillis relinq.

— 6, 42 De fideicommissis.

— 6, 43 Communia de legatis et fideicommissis, etc.

— 6, 44 De falsa causa adjecta legato vel fideicommisso.

— 6, 45 De his quae sub modo legata vel fideicommissa reliq.

— 6, 47 De usuris et fructibus legatorum vel fideicom.

— 6, 48 De incertis personis.

— 6, 49 Ad SC. Trebellianum.

— 6, 50 Ad legem Falcidiam.

— 6, 51 De caducis tollendis.

— 6, 52 De his qui ante apertas tabulas hereditates transmit.

— 6, 53 Quando dies legati vel fideicom. cedit.

— 6, 54 Ut in possession. legatorum et fideicom. servand. causa, etc.

— 8, 3 Quod legatum.

— 8, 7 De tabulis exhibendis.

— 9, 23 De his qui sibi abscribunt in testamento.

— 9, 32 De crimine expilatae hereditatis.

Nov. 1 De heredibus et Falcidia.

— 18 De triente et semisse et succession. filiorum et nepotum naturalium, etc.

— 66 Ut factae novae constitutiones . . . valeant. Parcit . . . subtilitatem constitution. super testamentis in reliq. quadrante, etc.

- 92 De immensis donatione in filios.
- 107 De testamentis imperfectis a parentibus in filios factis, etc.
- 108 De restitutionibus.
- 159 De restitutione fideicommissi, etc.

(c) **Post-Justinian:**

THEOPHILUS, ii, 7, 9–25. The titles of these are the same as *supra* (b), **INST.** ii, 7, 9–25.

ECLOGA, 5 De personis testari prohibitis et de testamentis per scripturam vel per nuncupationem faciendis.

PROCHIRON, 21 De testamento hominum sui juris.

— 22 De testamento hominum alieni juris.

— 23 De testamento libertorum.

— 24 De testamento espiscoporum et monachorum.

— 25 De confirmatione testamenti.

— 29 De codicillis.

— 30 De heredibus.

— 32 De Falcidia.

— 33 De exheredibus.

— 35 De legatis.

EPANAGOGA, 29 De testamento et codicillo.

— 30 De his quibus non est permisum facere testamentum.

- 31 De testamento hominum alieni juris. (§ 1001)
- 32 De confirmatione testamenti.
- 34 De Falcidia et exheredibus.
- 36 De legato.
- BAS.** 35, 1 De testamento et codicillis, et quinam . . . facere possunt, et quemadmodum testamenta fiant.
- 35, 2 De testamento et quemadmodum testamenta ordinentur.
- 35, 3 Qui testamenta facere possint, etc.
- 35, 4 Si quis aliquem testari prohibuerit, etc.
- 35, 5 De tabulis exhibendis, etc.
- 35, 6 Testamenta quemadmodum aperiantur, etc.
- 35, 7 De his, quae in testamento cancellata . . . vel inducta, vel deleta, vel adscripta.
- 35, 8 De liberis et postumis heredibus institutis vel exhereditis, vel . . . praeteritis, etc.
- 35, 9 De heredum institutione et substitutione.
- 35, 10 De substitutione hominum, etc.
- 35, 11 De SC. Trebeliano, etc.
- 35, 13 De jure institutionis, . . . et de substitutionis, etc.

(§1001) —— 35, 14 De acq. et omit., et adeunda et exquirienda hereditate . . . et de bonorum possessione.

—— 35, 15 Si quis omissa causa testamenti ab intestato . . . hered. possideat.

—— 35, 16 De dominis, qui insidiis . . . necati, etc.

—— 35, 17 De bonorum possessione secundum tabulas.

—— 35, 18 Ut deliberandi jus . . . transmit.

—— 35, 19 De edicto divi Hadriani tollendo, et quomodo heres scriptus in possession. mittatur.

—— 35, 20 De divisionibus, et de voluntatibus, inter liberos, etc.

—— 35, 21 De testamento militis.

—— 36, 1 De codicillis.

—— 39, 1 De querela testamenti.

—— 39, 2 De injusto et rupto et irrito testamento.

—— 40, 3 De bonorum possessione contra tabulas.

—— 40, 7 Quando non . . . partes accrescant, et de bon. poss. secundum tabulas et de bonorum poss. libertorum.

—— 41, 1 De Falcidia.

—— 41, 2 Si quis plus, quam per legem Falcidiā lic., legatum sit.

—— 41, 3 SC. . . . Trebellianum, et de eis qui . . . et Falcidiā retinere debent.

—— 41, 4 De heredibus et Falcidia.

—— 41, 5 De immensis donation. in liberis, etc.

—— 41, 6 De jure jurando, quod defunctus de modo substantiae, etc.

—— 42, 2 Si pars hered. petatur . . . et fideicom. hered. petitione.

—— 44, 1 De legatis et fideicommissis.

—— 44, 2 De legatis et fideicommissis.

—— 44, 3 De legatis et fideicommissis.

—— 44, 4 De annuis legatis et fideicom.

—— 44, 8 De optione vel electione legata.

—— 44, 9 De tritico vino oleo legata.

—— 44, 10 De instructo vel instrumento legato.

—— 44, 11 De peculio legato.

—— 44, 12 De penu legata.

—— 44, 13 De supellectile legata.

—— 44, 14 De alimentis legatis.

—— 44, 15 De auro argento . . . vel statuis legatis.

—— 44, 17 De ademtione vel translatione legatorum vel fideicom.

- 44, 18 *De rebus dubiis legatis, et de incertis personis.*
- 44, 19 *De conditione et demonstratione . . . Quae in testamentis de legatis, etc.*
- 44, 20 *De eo, quibus diebus legatum vel fideicommissum cesset.*
- 44, 21 *Cuinam legatorum et fideicom. servand. gratia heres caveat.*
- 44, 22 *De eo, ut in possession. legatorum vel fideicom. . . liceat.*
- 44, 23 *De legatis praestandis contra tabulas bonorum possessione petita.*
- 44, 24 *Interdictum adv. legatarios.*
- 44, 25 *De possessione et usucapione legatorum, etc.*
- 44, 26 *Si omissa sit causa testamenti.*
- 44, 27 *Communia de legatis et fideicommissis, etc.*
- 44, 28 *De legatis vel fideicommissis sub modo relictis.*
- 44, 29 *Quod non dictatur liberis orbatus qui nepotem, etc.*
- 44, 30 *De adscendentibus et descendantibus, quomodo ad eos legata transmit.*
- 44, 31 *Tunc possessio legatorum vel fideicom. servand. causa permissa, etc.*
- 48, 13 *De fideicom. li- (§ 1001) bertantibus, etc.*
- 60, 42 *De iis, quibus ut indignis reicta legata vel hereditates, etc.*
- HEXABIBLOS, 5, 1** *De testamento hominum sui juris.*
- 5, 2 *De testamento hominum alieni juris.*
- 5, 3 *De testamento libertorum.*
- 5, 4 *De testamento episcoporum et monachorum.*
- 5, 5 *De infirmatione testamenti.*
- 5, 6 *De querela et opugnatione testamenti.*
- 5, 7 *De codicillis.*
- 5, 9 *De Falcidia.*
- 5, 10 *De exheredatis.*
- 5, 11 (10) *De legato.*
- Appendix, title 3 *De significatione verborum.*

II. Modern references: —

(a) In general:

- AMOS, *Perpetuities in French law*, 13 *Journal Soc. Compar. Legis. N. S.*, p. 47 (on substitutions).
- *Roman law*, pp. 305 et seq.
- BRISSAUD (Howell), *Hist. of French private law*, pp. 684-748.
- BRUNE, *Origin and history of succession in Roman law*, 36 *Law Mag. & Rev.*, p. 429.

(§1001) COIN-DESLISLE, *Donations et testaments*, Paris, 1855.

COLQUHOUN, *Roman law*, §§ 1148-1358.

DECLAREUIL, *Quelques notes sur certains types de fidéi-commis* (*Mélanges Gérardin*, p. 135, Paris, 1907).

ESMEIN, *Le testament du mari, etc.* (*Mélanges*, p. 36, Paris, 1886).

GIRARD, *Manuel de droit romain*⁵, pp. 800-842.

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FRANCE, 893-1100.

GERMANY, 2064-2385.

ITALY, 759-1096.

JAPAN, 1060-1146.

LOUISIANA, 871, 1467-1733.

MEXICO, 3227-3570, 3637.

PHILIPPINES, 657-911. (See Willard, *Notes on Spanish Civil Code*, pp. 47-50, Manila, 1904.)

PORTO RICO, 664-885.

QUEBEC, 754-981.

RUSSIA, 1010-1103.

SPAIN, 657-911.

SWITZERLAND, 457-640.

III. See also *supra* § 1000; vol. ii, §§ 678-715.

Obligations (including formation, correality, transmissibility, performance, tender, release, rescission, loss of thing due, novation, submission to arbitration, set-off, confusion, joinder of issue, extinctive prescription); general principles of contracts (including parties, meeting of the minds, form, consideration): references.

I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) *Ante-Justinian*:

XII TABLES, vi, 1-2; viii, 19.

GAIUS, i, 184, 192-5; ii, 12-19; iii, 88-9, 97-114, 163-81; iv, 61, 64-8, 110-14.

PAULUS, *Sent.* 1, 1 *De pactis et conventis.*

— 1, 7 *De integri restitu-*
tione.

— 2, 1 *De rebus creditis et jure jurando.*

— 5, 7 *De obligationibus.*

— 5, 8 *De novationibus.*

COD. GREGORIAN. 1, 10 *De pactis.*

— 1, 11 *De transactionibus.*

(§1002) —— 2 De his quae vi metusve causa.
 —— 3 Si major fuerit probatus.
 —— 4 Si amissis vel debitori redditis instrumentis creditum petatur.
 —— 4 Si debito persoluto instrument., etc.
 —— 12 De duobus reis stipulandi et promittendi.
 COD. HERMOGENIAN. De pactis et transactionibus.
 —— Ex delictis defunctorum, etc.
 COD. THEOD. 2, 9 De pactis et transactionibus.
 —— 4, 5 De litigiosis.
 —— 11, 28 De indulgentiis debitorum.

(b) **Justinian:**

INST. 1, 21 De auctoritate tutor. (as far as §3).
 —— 2, 2 De rebus incorporealibus.
 —— 3, 13 De obligationibus.
 —— 3, 15 De verb. obligation., 7.
 —— 3, 16 De duobus reis stipulandi et promittendi.
 —— 3, 19 De inutilibus stipulation.
 —— 3, 24 De locatione et conduct., 6.
 —— 3, 28 Per quas personas adquir.
 —— 3, 29 Quibus modis obligatio tollitur (as far as §5).
 —— 4, 6 De actionibus, 30 and 39.
 —— 4, 12 De perpetuis et temporal. action et quae ad heredes vel in heredes transeunt.
 DIG. 2, 14 De pactis.
 —— 2, 15 De transactionibus.
 —— 4, 8 De receptis.
 —— 12, 4 De condicione causa data non secuta.
 —— 12, 5 De condicione obturpem vel injustam causam.
 —— 12, 6 De condicione indebiti.
 —— 12, 7 De condicione sine causa.
 —— 13, 4 De eo quod certo loco dari oportet.
 —— 16, 2 De compensationibus.
 —— 18, 2 De in diem addicione.
 —— 18, 3 De lege commissoria.
 —— 18, 5 De rescind. venditione.
 —— 19, 5 De praescriptis verbis et in factum action.
 —— 22, 1 De usuris et fructibus . . . et mora.
 —— 43, 25 De remissionibus.
 —— 44, 4 De doli mali et metus, etc.
 —— 44, 7 De obligationibus, etc.
 —— 45, 2 De duobus constituendis.

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- 46, 2 De novation. et delegation.
- 46, 3 De solutionibus et liberation.
- 46, 4 De acceptilationibus.
- 46, 7 Judicatum solvi.
- 46, 8 Ratam rem habere et de ratihabitione.
- 50, 16 De verborum significatione.
- CODE, 2, 3 De pactis.
- 2, 4 De transactionibus.
- 2, 5 De calculi errore.
- 2, 13 Ne liceat . . . actiones transferre.
- 2, 19 (20) De his quae vi metusve causa, etc.
- 2, 20 (21) De dolo malo.
- 2, 31 (32) Si adv. transactionem minor restitui velit.
- 2, 32 (33) Si adv. solutionem, etc.
- 2, 45 (46) Si major factus ratum habuerit.
- 2, 55 (56) De receptis.
- 2, 56 (57) De satisdando.
- 3, 9 De litis contestatione.
- 3, 18 . . . qui certo loco dare promisit.
- 3, 42 Ad exhibendum.
- 4, 6 De condicione ob causam datorum.
- 4, 7 De condicione ob turpem causam.
- 4, 9 De condicione ex
- lege et sine . . . vel in-^(§ 1002) justa causa.
- 4, 10 De obligationibus, etc.
- 4, 11 Ut actiones et ab herede et contra heredem incipient.
- 4, 15 Quando fiscus vel privat. debitor sin debitores exigere potest.
- 4, 17 Ex delictis defunctionum in quantum heredes conveniantur.
- 4, 22 Plus valere quod agitur, etc.
- 4, 27 Per quas personas adquir.
- 4, 31 De compensationibus.
- 4, 44 De rescind. venditione.
- 6, 38 De verb. et rerum significatione.
- 7, 26 De . . . transactione.
- 7, 40 De annali exceptione Italici contractus tollenda et de diversis temporibus . . . et praescriptionibus, etc.
- 7, 71 De bonis cedere possunt.
- 8, 38 (39) De inutilibus stipulation.
- 8, 39 (40) De duobus reis stipulandi et . . . promittendi.
- 8, 41 (42) De novation. et delegation.

(§ 1002) —— 8, 42 (43) *De solutionibus et liberatione.*
 —— 8, 43 (44) *De acceptationibus.*
 —— 11, 40 (39) *De solutionibus et liberatione, etc.*
 —— 11, 57 (56) *Ut nullus ex vicanis pro alienis debitis vicanorum teneatur.*
Nov. 4 De . . . solutionibus.
 —— 73 *De instrumentorum . . . scriptis . . . et de ex non scripto contractibus, etc.*
 —— 99 *De reis promittendis.*

(c) **Post-Justinian:**

THEOPHILUS, i, 21, to § 1; ii, 2; iii, titles 13, 15 16, 19, 24 § 6, 28, 29, to § 5; iv, title 6, §§ 30 and 39, title 12 (for full titles of these, see *supra* "b", *INST.*).

ECLOGA, 15 *De transactionibus validis aut rescissis.*

PROCHIRON, 37 *De tempore quo creditores adv. heredes, etc.*

EPANAGOGA, 27 *De transactione.*
 —— 35, *De temporibus quibus creditores adv. heredes defuncti, etc.*

BAS. 2, 2 *De verborum significatione.*
 —— 7, 2 *De sententia arbitrorum et judicium compromissariorum.*

—— 10, 14 *Si adv. transactionem vel divisionem minor restitui velit.*
 —— 10, 15 *Si adv. solutionem a debitore, etc.*
 —— 10, 20 *Si adv. creditorem.*
 —— 10, 28 *Si major factus ratum habuerit.*
 —— 11, 1 *De pactis vel conventionibus.*
 —— 11, 2 *De transactione.*
 —— 19, 18 *De monopoliiis et de conventu . . . illicito, etc.*
 —— 24, 1 *De condicione causa data, causa non data.*
 —— 24, 2 *De condicione ob turpem vel injustam causam.*
 —— 24, 3 *De conditione ex lege, ex sine causa vel injusta causa, et de obligationibus, etc.*
 —— 24, 4 *Ne uxor pro marito, vel maritus pro uxore, vel mater pro filio, vel filius pro patre, vel pater pro filio emancipato, vel libertus pro patrono teneantur.*
 —— 24, 6 *De eo, qui indebitum solvit, et solutum repetit.*
 —— 24, 8 *De eo, quod solutum et sine causa, etc.*
 —— 24, 9 *De eo, quod certo loco dari oportet.*
 —— 24, 10 *De compensatione.*

— 26, 3 *De . . . duobus reis promittendis et de his qui solverunt.*

— 26, 4 *De novatione sive translatione debiti, etc.*

— 26, 5 *De solutionibus et liberation.*

— 26, 6 *De liberation. sive acceptilatione, etc.*

— 43, 2 *De duobus reis constituendis.*

— 43, 6 *De contractu interposita stipulatione.*

— 44, 16 *De liberatione legata, et de falsa causa solutionis, etc.*

— 50, 15 *De annali exceptione Italici contractus tolenda et de diversis temporibus . . . et praescriptionibus, etc.*

— 51, 6 *Quorum rerum actio non datur.*

— 52, 1 *De obligationibus, etc.*

— 54, 13 *De pollicitationibus.*

— 54, 36 *De solutionibus et liberation., etc.*

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— 1, 4 *De judiciali sententia et re judicata.*

— 1, 9 *De pactis.*

— 1, 10 *De transactione.*

— 1, 11 *De necessitate et vi.*

— 1, 15 *De obscuro et ambiguo.*

— 1, 16 *De militibus.* (§ 1002)

— 5, 13 *Quo tempore creditores adv. defuncti heredes agere possunt.*

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(a) **In general:**

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WILLISTON, Dependency of mutual promises in the Civil Law, 13 Harvard Law Rev., pp. 80–109.

(b) **Modern Codes:**— References are to the Civil Code, unless otherwise stated.

ARGENTINA, 529–2321.

AUSTRIA, 859–1502.

CHILE, 1437–2524.

FRANCE, 1101–2281.

GERMANY, 241–853.

ITALY, 1097–2147.

JAPAN, 399–724.

LOUISIANA, 1756–3555.

MEXICO, 1272–3226.

PHILIPPINES (same as Spain).

PORTO RICO, 1055–1875.

QUEBEC, 982–2612.

RUSSIA, 1374–2334.

SPAIN, 1088–1975.

SWITZERLAND, Code of Obligations.

III. **See also** supra vol. ii, §§ 645–6 (prescription), 716–17 (bankruptcy), 724–51 (obligations and contracts), 857, 872 (civil procedure); supra vol. iii, § 998; infra §§ 1016, 1018.

§ 1003 Contracts of loan (*nexum, mutuum, maritime loan, and commodatum*): references.

I. **Texts of Roman law:**—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, viii, 18.

GAIUS, iii, 91; iv, 116.

PAULUS, Sent. 2, 4 De *commodato*, etc.

— 2, 10 De SC. Macedonio.

— 2, 14 De *usuris*.

COD. GREGORIAN. Ad SC. Macedonianum.

COD. THEOD. 2, 33 De *usuris*.

— 4, 18 De *fructibus*, etc.

— 4, 19 De *usuris rei judicatae*.

¹ WALTON, *Cause and consideration in contracts*, 41 Law Quart. Rev., p. 306 (1925).

- 9, 11 *De privati carceris custodia.*
- (b) **Justinian:**
 - INST.* 3, 14 *Quibus modis . . . obligatio.*, §§ 1-12.
 - 4, 7 *Quod cum eo qui in aliena potestate est negotium etc.*
 - DIG.* 12, 1 *De rebus creditis, etc.*
 - 13, 6 *Commodati vel contra.*
 - 22, 2 *De nautico faenore.*
 - 43, 32 *De migrando.*
 - 44, 7 *De obligationibus, etc.*
 - CODE*, 2, 37 (38) *Si adv. creditorem.*
 - 4, 23 *De commodato.*
 - 4, 28 *Ad SC. Macedonianum.*
 - 4, 30 *De non numerata pecunia.*
 - 4, 32 *De usuris.*
 - 4, 33 *De nautico fenore.*
 - 5, 56 *De usuris pupil.*
 - 6, 47 *De usuris, etc.*
 - 7, 54 *De usuris rei judicatae.*
 - 9, 5 *De privatis carceribus inhibendis.*
 - 10, 6 *De his qui ex publicis rationibus mutuam pecuniam acceperunt.*
 - 10, 8 *De fiscal. usuris.*
 - Nov.* 32 *Ne quis mutuum . . . et quantam usuram, ab agricolis, etc.*
 - 33 *Ut nullus mutuans.* (§1003) *agricolae, etc.*
 - 34 *Nullum credentem agricolae . . . et quantam . . . usuram, etc.*
 - 73 *De instrumentis . . . et . . . mutuo, etc.*
 - 106 *De usuris nauticis.*
 - 110 *De usuris nauticis.*
 - 121 *Ut quae . . . fiunt usurarum, etc.*
 - 138 *De usuris, etc.*
- (c) **Post-Justinian:**
 - THEOPHILUS* iii, 14, §§ 1-2; iv, 7 (same titles as those of *supra* "b" *INST.*).
 - ECLOGA*, 10 *De mutuo, etc.*
 - PROCHIRON*, *De mutuo, etc.*
 - EPANAGOGA*, *De mutuo, etc.*
 - BAS.* 10, 5 *De filiusfam. minor.*
 - 10, 6 *De fidejussor. minorum.*
 - 13, 1 *Commodati vel contra.*
 - 18, 4 *De SC. Macedoniano, etc.*
 - 23, 1 *De rebus creditis, etc.*
 - 23, 3 *De usuris, etc.*
 - 38, 17 *De usuris pupil.*
 - 52, 1 *De obligationibus, etc.*
 - 53, 5 *De creditis naval.*
 - 60, 55 *Ut ne sint privati carceres.*
 - HEXABIBLOS*, 2, 2 *De non numerata pecunia.*

— 2, 10 *De commodato, etc.*
 — 3, 5 *De mutuo, etc.*
 — 3, 7 *De usura.*

II. Modern references:—

(a) **In general:**

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(b) **Modern codes:**

References are to the Civil Code, unless otherwise stated.

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PHILIPPINES (same as Spain).

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SWITZERLAND, code of Obligations, 305–18.

III. See also supra § 1002; vol. ii, §§ 754–7.

§ 1004 Depositum: references.

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII Tables, viii, 19.

PAULUS, *Sent.* 2, 4 *De . . . et deposito.*

— 2, 12 De deposito.
COD. GREGORIAN. 4 De de-
posito.

COD. THEOD. 2, 28 De pecuniae
sequestratione prohibita.

COLL. MOSAIC. ET ROM. 10
De deposito.

(b) **Justinian:**

INST. 3, 14 Quibus modis . . .
obligatio, § 3.

DIG. 43, 32 De migrando.
— 44, 7 De obligationibus,
etc.

CODE, 4, 4 De prohibita
sequestratione pecuniae.

— 4, 34 Depositi.

NOV. 73, De instrumen-
torum . . . et . . . de de-
posito, etc.

— 88 De deposito, etc.

(c) **Post-Justinian:**

THEOPHILUS, 3, 14 Quib.
modis . . . obligatio, § 3

ECLOGA, 11 De deposito.

PROCHIRON, 18 De deposito.

EPANAGOGA, 25 De deposito.

BAS. 13, 2 De deposito.

HEXABIBLOS, 3, 9 De deposito.

II. Modern references:—

(a) **In general:**

COGGS *v.* BERNARD, Lord
Raymond's Rep. 909.

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(b) **Modern Codes:**

References are to the Civil
Code, unless otherwise
stated.

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PORTO RICO, 1660-91.

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tions, 253-304.

III. See also supra § 1002;
vol. ii, § 758.

§ 1005 Pledge (pignus, vadium): references. The subject of pledge is covered bibliographically under *supra* § 996 (personal, praedial, and praetorian servitudes, C, 2: *Fiducia, pignus, hypotheca*, etc.). To the list of modern references should be added:

DENIS, *Treatise on the law of the contract of pledge as governed both by the Common Law and the Civil Law* (1898).

PAPPULIAS, *Das Pfandrecht nach dem griechisch. u. röm. Rechts.* (1909).

SEE also, vol. ii, § 759.

§ 1006 Exchange: references.

I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) Ante-Justinian:

GAIUS, 3, 141.

(b) Justinian:

INST. 3, 23 *De emptione et venditione*, § 2.

DIG. 12, 4 *De conduct. causa data, etc.*, 16.

— 19, 3, *De aestimatoria*, 1, pr.

— 19, 4 *De rerum permutatione*.

— 19, 5 *De praescriptis verbis, etc.*, 5, § 1.

CODE, 4, 64 *De rerum permutatione*,

Nov. 7 *De non etc. . . . permutandis ecclesiasticis. rebus, etc.*

(c) Post-Justinian:

THEOPHILUS, 3, 23 *De emptione et venditione*, § 2.

BAS. 20, 3 *De permutatione*.

II. Modern references:—

(a) Modern Codes:

References are to the Civil Code, unless otherwise stated.

ARGENTINA, 1519–26.

AUSTRIA, 1045–62.

CHILE, 1897–1900; code of Commerce, 161.

FRANCE, 1702–7.

GERMANY, 515.

ITALY, 1549–55.

JAPAN, 586.

LOUISIANA, 2660–67.

MEXICO, 2930–35.

PHILIPPINES (same as Spain).

PORTO RICO, 1441–4.

QUEBEC, 1596–9.

RUSSIA, 1374–80.

SPAIN, 1538–41.

SWITZERLAND, code of Obligations, 237–8.

III. See also *supra* § 1002; vol. ii, § 761.

Stipulation (stipulatio): references.

§ 1007

I. Texts of Roman law:—

For English translations, see
supra §§ 945, 948, 951, 952,
955.

(a) **Ante-Justinian:**

GAIUS, iii, 92–114.

PAULUS, Sent. 2, 3 De contractibus.

— 5, 7 De obligationibus.

— 5, 9 De stipulationibus.

COD. GREGORIAN. 12 De duobus reis stipulandi, etc.

VATICAN FRAG. 317–41, De cognitoribus, etc.

(b) **Justinian:**

INST. 3, 15 De verborum obligatione.

— 3, 16 De duobus reis stipulandi, etc.

— 3, 17 De stipulatione servorum.

— 3, 18 De divisione stipulationum.

— 3, 19 De inutil. stipulation.

DIG. 44, 7 De obligationibus, etc.

— 45, 1 De verborum obligation.

— 45, 2 De duobus constituendis.

— 45, 3 De stipulatione servorum.

— 46, 4 De acceptilatione.

— 46, 5 De stipulation. praetoriis.

— 46, 6 Rem pupilli . . . salvam fore.

— 46, 7 Judicatum solvi.

— 46, 8 Ratam rem haberi, etc.

— 50, 16 De verborum signif., 7.

CODE, 8, 37 (38) De contracthenda stipulation.

— 8, 38 (39) De inutil. stipulation.

— 8, 39 (40) De duobus stipulandi, etc.

— 8, 43 (44) De acceptilationibus.

Nov. 99 De reis promittend.

(c) **Post-Justinian:**

THEOPHILUS, iii, 15–19 (same titles as supra "b", INST.).

BAS. 26, 6 De . . . acceptilatione, etc.

— 43, 1 De verborum obligation.

— 43, 2 De duobus reis constituendis.

— 43, 3 De stipulation. servorum.

— 43, 4 De praetoriis stipulation.

— 43, 5 De litigiosis.

— 43, 6 De contractu interposita stipulatione.

— 52, 1 De obligationibus, etc.

II. Modern references:

COLLINET, *Le rôle primitif de la stipulation* (Mélanges Gérardin, p. 75, Paris, 1907).
HAZELTINE, *The formal con-*

tract of early English law,
10 *Columbia Law Rev.*, p.
608.

III. See also supra § 1002;
vol. ii, § 767.

§ 1008 Suretyship: references:**I. Texts of Roman law:—**

For English translations, see
supra §§ 945, 946, 948, 951,
952, 955.

(a) Ante-Justinian:

GAIUS, 3, 115–27.

PAULUS, *Sent.* 1, 20 *De fide-
jussore*, etc.

— 2, 2 *De pecunia consti-
tuta*.

— 2, 11 *Ad SC. Velleianum*.

— 5, 10 *De contrahenda
auctoritate*.

COD. GREGORIAN. 4 *Si debito
persoluto*, etc.

— 12, *De sponsor. et fide-
jussores*.

COD. HERMOGENIAN. *De cau-
ta . . . pecunia*.

COD. THEOD. 2, 13 *De action-
ibus ad potentes*, etc.

— 3, 15 *De fidejussores. do-
tium*.

— 10, 5 *Qui . . . fidejus-
sores*, etc.

— 12, 11 *De curator. kalen-
darii et fidejussores. eorum*.

NOV. VALENTINIAN. 12 *De
. . . fidejussores*, etc.

(b) Justinian:

INST. 3, 20 *De fidejussores*.

— 4, 6 *De action.*, §§ 8–9.

DIG. 13, 5 *De pecunia consti-
tuta*.

— 16, 1 *Ad SC. Velleianum*.

— 27, 7 *De fidejussores*, etc.

— 46, 1 *De fidejussores. et
mandator*.

— 50, 16 *De verb. signif.* 7.

CODE, 2, 23 (24) *De fidejus-
sores*, etc.

— 4, 18 *De constituta pec-
unia*.

— 4, 29 *Ad SC. Velleianum*.

— 8, 40 (41) *De fidejussores.
et mandator*.

Nov. 4 *De fidejussores. et
mandator*, etc.

— 99 *De reis promittendi*.

(c) Post-Justinian:

THEOPHILUS, 3, 20 *De fide-
jussores*.

— 4, 6 *De action.* §§ 8–9.

BAS. 9, 10 *Cautio judicati,
etc.*

— 9, 11 *De satisdatione
ratam rem haber*.

— 10, 6 *De fidejussores*, etc.

— 26, 1 De fidejussor. et mandator.

— 26, 2 Ut creditores . . . mandatores vel pecuniae constitutae reos, vel fidejussores.

— 26, 3 De constituta pecunia, etc.

— 26, 7 De constituta pecunia et SC. Velleiano.

HEXABIBLOS, 1, 13 De mulieribus.

— 3, 6 De fidejussor. et pecuniae constitutae reis.

II. Modern references:—

(a) In general:

APPLETON, Nouvelles observations sur la loi Furia de sponsu (in *Mélanges Gérardin*, p. 1, Paris, 1907).

LEVY, Sponsio, fidepromissio, fidejussio, Berlin, 1907.

TOURTOULON, Le Velléien chez les Glossateurs (in *Études de l'hist. jurid. off.* à P. F. Girard, vol. i, p. 417, Paris, 1913).

ZOCCHI-ROSA, Origin of sponsio, 18 Law Quart. Rev., p. 346.

Literal contracts (*expensilatio*, *chirographum*, *syngrapha*, § 1009 *cautio*): references.

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(b) Modern Codes:

References are to the Civil Code, unless otherwise stated.

ARGENTINA, 2020-84; code of Commerce, 478-83.

AUSTRIA, 1346-74.

CHILE, 2335-83; code of Commerce, 820-21.

FRANCE, 2011-43.

GERMANY, 765-78.

ITALY, 1898-1931.

JAPAN, 446-65.

LOUISIANA, 3035-70.

MEXICO, 1700-72.

PHILIPPINES, same as Spain.

PORTO Rico, 1723-57.

QUEBEC, 1185-6, 1199, 1929-65.

RUSSIA, 1555-72.

SPAIN, 1822-56; code of Commerce, 439-42.

SWITZERLAND, code of Obligations, 492-512.

III. See also supra §§ 1002, 1007, and infra 1009 (*cautio*); supra vol. ii, §§ 768-72.

(a) Ante-Justinian:

GAIUS, 3, 128-34.

COD. HERMOGENIAN. De cauta et non numerata pecunia.

COD. THEOD. 2, 4 De de-nuntiatione, etc., 6.
 —— 2, 27 Si certum petatur de chirografis.

(b) **Justinian:**
 INST. 3, 21 De litterarum obligatio.
 —— 4, 13 De exception., § 2.
 DIG. 44, 7 De obligation., etc.
 NOV. 100 De tempore non solutae pecuniae, etc.

(c) **Post-Justinian:**
 THEOPHILUS, 3 21 De litterarum obligatio.
 —— 4, 13 De exception., § 2.
 BAS. 9, 10 Cautio judicati, etc.

II. Modern references:—
 CAUTIO judicatum solvi in French law, 135 Law Times, p. 96.

DUQUESNE, Contribution à l'étude de la cautio judicatum solvi (in *Mélanges Gérardin*, p. 197, Paris, 1907).

KRUEGER, Die Cautio Musciana (in *Mélanges P. F. Girard*, vol. ii. p. 1, Paris, 1912).

LABORDERIE, Quelques notes sur la cautio dans la pratique romain au temps classiques, 33 Rev. gén. du droit, p. 439.

III. See also supra §§ 1002, 1008; vol. ii, §§ 776–8.

§ 1010 Sale: references.

I. Texts of Roman law:—
 For English translations, see supra §§ 945, 947, 951, 952, 955.

(a) **Ante-Justinian:**
 XII TABLES, xii, 1.
 GAIUS, iii, 135–7, 139–47.
 PAULUS, Sent. 2, 17 Ex empto et vendito.
 COD. GREGORIAN. 3 Si sub alterius nomine res empta erit.
 COD. THEOD. 3, 1 De contrahenda emptione.
 —— 3, 4 De aediliciis actionibus.

Nov. THEOD. 19 De rescind. vendition., etc.

Nov. VALENTINIAN. 5 De pantapolis ad urbem Romam, etc.

— 32 De confirm. his quae administrantibus . . . distracta, etc.

VATICAN FRAG. 1–40 Ex empto et vendito.

(b) **Justinian:**
 INST. 2, 1 De rerum divisione, §§ 40–46.
 —— 3, 22 De consensu obligatione.

- 3, 23 De emptione et venditione.
- DIG. 18, 1 De contrahenda emptione et de pactis.
- 18, 4 De hereditate vel actione vendita.
- 18, 5 De rescind. venditione.
- 18, 6 De periculo et commodo rei venditae.
- 19, 1 De actionibus empti venditi.
- 21, 1 De aedilicio edicto et redhibitione et quanti minoris.
- 21, 2 De eviction., etc.
- 21, 3 De exceptione rei venditae et traditae.
- 41, 4 Pro emptore.
- 42, 5 De rebus auctoritate judicis . . . vendundis.
- 42, 8 Quae in fraudem creditorum facta, etc.
- 44, 6 De litigiosis.
- CODE, 2, 27 (28) Si adversus venditionem.
- 2, 54 (55) Se alienation. judicij mutandi causa facta.
- 4, 36 Si servus se emi mandaverit.
- 4, 38 De contrahenda emptione.
- 4, 39 De hereditate vel actione vendita.
- 4, 40 Quae res venire non possunt et qui vendere vel emere vetantur.
- 4, 41 Quae res exportari (\$1010) non debeant.
- 4, 44 De rescind. venditione.
- 4, 45 Quando liceat ab emptione discedere.
- 4, 46 Si propter publicas pensitationes venditio fuerit celebrata.
- 4, 47 Sine censu vel reliquis fundum comparari non posse.
- 4, 48 De periculo et commodo rei venditae.
- 4, 49 De actionibus empti et venditi.
- 4, 50 Si quis . . . sub alterius nomine . . . emerit.
- 4, 51 De rebus alienis non alienandis et de prohibita rer. alienatione, etc.
- 4, 52 De communium rerum alienatione.
- 4, 53 Rem alienam gerentibus, etc.
- 4, 54 De pactis inter emptor. et venditor.
- 4, 55 Si servus exportandus veneat.
- 4, 56 Si mancipium ita venerit, ne prostituatur.
- 4, 57 Si mancipium ita fuerit alienatum, ut manmittatur vel contra.
- 4, 58 De aediliciis actionibus.
- 4, 60 De nundinis.

(§1010) —— 4, 63 *De commerciis et mercatoribus.*
 —— 7, 72 *De bonis auctoritate judicis . . . venumdandis, etc.*
 —— 7, 75 *De revocandis his quae per fraudem alienata sunt.*
 —— 8, 44 (45) *De eviction.*
Nov. 7 De non alienandis . . . ecclesiasticis rebus, etc.
 —— 40 *Ut ecclesia . . . possit alienare habitacula, etc.*
 —— 46 *De ecclesiastic. immobil. rerum alienatione, etc.*
 —— 65 *Alienatione ecclesiae Mysiae relictarum pro captivorum redemtione, etc.*
 —— 85 *De armis.*
 —— 120 *De alienatione . . . in universis locis rerum sacrarum.*
CONST. DISPERSAE (in Appendix II to Nov.) 5 De metaxa.

(c) **Post-Justinian:**

THEOPHILUS, 2, 1 *De rer. divisione, §§ 40-46.*
 —— 3, 22 *De obligationibus ex consensu.*
 —— 3, 23 *De emtione et venditione.*
ECLOGA, 9 *De venditione et emtione, etc.*
PROCHIRON, 14 *De venditione et emtione.*

EPANAGOGA, 23 *De venditione et emptione.*
BAS. 5, 2 *De alienatione . . . rer. ecclesiastic.*
 —— 9, 6 *Quibus ex causis in possession., etc.*
 —— 9, 7 *De rebus auctoritate judicum . . . venumdandis.*
 —— 10, 10 *Si adv. venditionem.*
 —— 19, 1 *De contractu emtionis et venditionis, etc.*
 —— 19, 2 *Quando in emptione et venditione, etc.*
 —— 19, 3 . . . cum . . . venditum sit, ut intra certum tempus pretium solveretur.
 —— 19, 4 *De hereditate vel actione vendita.*
 —— 19, 5 *De rescind. emtione et venditione, etc.*
 —— 19, 6 *De periculo et commodo rei venditae.*
 —— 19, 7 *De servis exportandis, vel si ita mancipium venierit, ut manumittatur, etc.*
 —— 19, 8 *De actione emti et venditi, etc.*
 —— 19, 9 *De re, quae aestimata ad vendendum, etc.*
 —— 19, 10 *De edicto aedilicio, et de re redhibenda, et de rescind. venditione et minori pretio dato.*
 —— 19, 11 *De eviction. rei venditae, etc.*

— 19, 12 De exceptione rei venditae et traditae.

— 19, 13 Si publicae administrationis nomine venditio celebrata fuerit.

— 19, 14 De fundo sine publicis tributis vel reliquis non comparando, etc.

— 19, 15 Si quis alteri, vel sub alterius nomine, vel aliena pecunia emerit.

— 19, 16 Rem alienam gerenti, etc.

— 19, 17 De ancilla ita vendita, ne prostituatur.

— 19, 19 De eviction., etc.

— 50, 4 Pro emtore.

— 53, 7 De emtione et venditioni vini.

— 54, 30 De vendendis rebus civitatis.

— 55, 5 Ne liceat habitatoribus metrocomiarum, etc.

— 55, 14 De cupressis ex luco Daphnensi vel Perseis per Aegyptum non . . . vendendis, etc.

— 56, 6 De fide et jure fisci, etc.

— 57, 9 De armis, etc.

— 60, 9 Si mensur falsum modum dixerit.

HEXABIBLOS, 3, 3 De emtione venditione, etc.

II. Modern references:—

(a) **In general:**

ACTIO REDHIBITORIA (modern cases and notes),

— 28 South African Law Journal (1910) 1, p. 142.

BENJAMIN, Sales of personal property (with reference to the English and American decisions, French Civil Code and Roman law), 6th American edition by Bennett (especially book i, part i, ch. iii, §§ 62; book ii, ch. vii, §§ 400-413), New York, 1892.

BONNET, Le vendeur obligé de donner (in *Mélanges Gérardin*, p. 43, Paris, 1907).

BOULARD, La vente dans les actes coptes (in *Études d'hist. jurid. off. à P. F. Girard*, vol. ii, p. 1, Paris, 1913).

Dicta and promissa in the Civil Law and under the modern codes, 49 Canadian Law Journal, p. 687.

MACKINTOSH, The Roman law of sale with modern illustrations², Edinburgh, 1907.

MEYNIAL, Note sur la loi "Emptorum," Code, loc. cond. 4, 65, 9 (in *Mélanges Gérardin*, p. 413, Paris, 1907).

— Des conditions requises au Moyen-Âge pour l'application de la rescission de la vente pour lésion d'autre moitié (*Mélanges P. F. Girard*, vol. ii, p. 201, Paris, 1912).

MOYLE, Contract of sale in Roman law, Oxford, 1892.

POTHIER (translated by Cushing), Sale, Boston, 1839.¹

TROLLEY, *La lésion en droit romain et droit français*, Paris, 1871.

VOET (translated by Berwick), *Commentary on the Pandects*, Book 13, title 7, books 18-21 (on purchase and sale, evictions, warranty), London, 1902.

— (translated by Wilson), *Contract of sale*, London, 1897.

WILLISTON, *Sale in the Civil Law, the risk of loss after an executory contract of*, 9 *Harvard Law Rev.*, p. 72.

(b) **Modern Codes:**

References are to the Civil Code, unless otherwise stated.

ARGENTINA, 1357-1467, 2123-2215.

AUSTRIA, 1053-89, 908-10, 922-33.

CHILE, 1793-1896.

FRANCE, 1582-1701; code of Commerce, 109.

GERMANY, 433-515, 336-45; code of Commerce, 373-7.

ITALY, 1447-1548; code of Commerce, 59-72.

JAPAN, 555-85; code of Commerce, 286-90.

LOUISIANA, 2438-2659.

MEXICO, 2811-2929.

PHILIPPINES (same as Spain).

PORTO RICO, 1348-1440.

QUEBEC, 1472-1595.

RUSSIA, 1381-1527, 1679-90.

SPAIN, 1445-1537.

SWITZERLAND, code of Obligations, 184-236.

III. See also *supra* § 1002; vol. ii, §§ 780-91.

§ 1011 Letting and hiring: references.

I. Texts of Roman law:—

For English translations see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, xii, 1.

GAIUS, iii, 135-7, 142-7.

PAUL. Sent. 2, 18 *De locato et conducto*.

COD. THEOD. 5, 12 *De*

¹ SHERMAN, Charles P., *Salient features of the Argentine law of sale*, 14 *Illinois Law Rev.*, p. 617.

— *Salient features of the Brazilian law of sale*, 42 *Canadian Law Times*, p. 648.

fundis patrimonial. . . et eorum conductoribus.

— 10, 3 *De locatione fundorum . . . et rei publicae et templorum.*

— 10, 5 *Qui conductores rei privatae.*

(b) **Justinian:**

INST. 3, 24 *De locatione et conductione.*

DIG. 19, 2 Locati conducti.
 — 21, 2 De eviction., etc.
 — 43, 25 De remissionibus.
 — 43, 26 De precario.
 — 43, 32 De migrando.
 CODE, 4 65 De locato et conducto.
 — 8, 44 (45) De eviction.
 — 11, 62 (61) De fundis patrimonial., etc.
 — 11, 71 (70) De locatione praediorum civil. vel fiscal., etc.
 — 11, 72 (71) De conductoribus . . . praediorum fiscal. et domus Augustae.
 — 11, 73 (72) Quibus ad conductionem praediorum fiscal., etc.

(c) **Post-Justinian:**

THEOPHILUS, 3, 24 De locatione et conductione.
 ECLOGA, 13 De conductione, etc.
 PROCHIRON, 17 De locatione.
 EPANAGOGA, 24 De locatione.
 BAS. 19, 11 De eviction., etc.
 — 19, 19 De eviction., etc.
 — 20, 1 De actione locati et conducti.
 — 20, 4 De actione praescriptis verbis.
 — 53, 4 De nave . . . locata.
 HEXABIBLOS, 3, 8 De locatione et conductione, etc.

II. Modern references:— (§ 1011)

(a) **In general:**

CIVIL LAW, misunderstandings of the, 6 Am. Law Rev., p. 37.

COGGS *v.* BERNARD, Lord Raymond's Rep. 909.

DESCHAMPS, Sur l'expression "locare operas" et le travail comme objet de contrat à Rome (Mélanges Gérardin, p. 157, Paris, 1907).

ESMEIN, Les baux perpétuels des formules d'Angers (in his Mélanges, p. 383, Paris, 1886).

— Les baux de cinq ans du droit romain (in his Mélanges, p. 219, Paris, 1886).

LONGO, Sulla natura nella "locatio conductio" (Mélanges P. F. Girard, vol. ii, p. 105, Paris, 1912).

MACDONELL, Classification of forms and contracts of labor in Roman law, Journal Soc. of Compar. Legis. (1904).

MEYNIAL, Note sur la loi "Emptorum," Code, 4, 65, 9 (Mélanges Gérardin, p. 413, Paris, 1907).

(b) **Modern Codes:**

References are to the Civil Code, unless otherwise stated.

ARGENTINA, 1527-1681; code of Commerce, 856-1017.

AUSTRIA, 1090-1174, 970.

CHILE, 1915-2013; code of Commerce, 166-232.

FRANCE, 1708-1831; code of Commerce, 216-72.

GERMANY, 535-80, 611-51; code of Commerce, 425-73, 556-663; Schuster, German law, pp. 257-301.

ITALY, 1568-1696; code of Commerce, 388-416, 480-546.

JAPAN, 601-42; code of Commerce, 331-52, 538-640.

LOUISIANA, 2668-2800.

MEXICO, 2434-2544, 2936-3065; code of Commerce, 626-726.

PORTO RICO, 1445-1506.

PHILIPPINES (same as Spain, Civil Code).

QUEBEC, 1600-1700, 2389-2406, 2423-41, 2461-7.

RUSSIA, 2201-90.

SPAIN, 1542-1603; code of Commerce, 586-651.

SWITZERLAND, code of Obligations, 253-304, 319-93. 440-57.

III. See also *supra* § 1002, *infra* § 1013; *supra* vol. ii, §§ 792-4.

§ 1012 Partnership: references. . .

I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) *Ante-Justinian*:

GAIUS, iii, 135-7, 148-54.

PAUL. *Sent.*, 2, 16 *Pro socio*.

(b) *Justinian*:

INST. 3, 25 *De societate*.

DIG. 17, 2 *Pro socio*.

CODE, 4, 37 *Pro socio*.

(c) *Post-Justinian*:

THEOPHILUS, 3, 25 *De societate*.

ECLOGA, 10 *De . . . societate*.

PROCHIRON, 19 *De . . . societate*.

— 20 *De dissolutione societatis*.

EPANAGOGA, 26 *De societate*.

BAS. 12 *De societate, etc.*

HEXABIBLOS, 3, 10 *De societate*.

— 3, 11 *De dissolutione societatis*.

II. Modern references:—

(a) In general:

BURDICK, Joint and several liability of partners, 11 *Columbia Law Rev.*, p. 101.

CORBETT, Partnership in Roman and English law, 11 *Law Mag. and Rev.*, p. 219.

SALVADORE, *Affectio sociatis*, *Rivista di Diritto Civile* (1911).

(b) **Modern Codes:**

References are to the Civil Code, unless otherwise stated.

ARGENTINA, 1682–1822; code of Commerce, 282–312.

AUSTRIA, 1175–1216.

CHILE, 2053–2115; code of Commerce, 348–423.

FRANCE, 1832–73; code of Commerce, 18.

GERMANY, 705–40; code of Commerce, 110–69; Schuster, *German law*, pp. 302–10.

ITALY, 1697–1736; code of Commerce, 76–113.

JAPAN, 667–88; code of Commerce, 42–118, 235–54.

LOUISIANA, 2801–90.

MEXICO, 2219–2341; code of Commerce, 89–153.

PHILIPPINES (same as Spain, Civil Code).

PORTO RICO, 1567–1610.

QUEBEC, 1830–1900.

RUSSIA, 2126–98.

SPAIN, 1679–1708; code of Commerce, 116–50.

SWITZERLAND, code of Obligations, 530–611.

III. See also *supra* § 1002; vol. ii, §§ 795–9.

Agency: references.

§ 1013

I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

GAIUS, iii, 135–7, 155–62; iv, 69–74.

PAUL. *Sent.* 1, 3 *De procuratoribus*.

— 2, 6 *De exercitor. et institutor.*

— 2, 8 *De institutoribus.*

— 2, 9 *De in rem verso.*

— 2, 15 *De mandatis.*

COD. GREGORIAN. 3 *Quod cum eo qui aliena potestate est, negotium gestum, etc.*

COD. THEOD. 2, 31 *Quod jussu.*

VATICAN FRAG. 317–41 *De cognitor. et procurator.*

(b) **Justinian:**

INST. 3, 26 *De mandato.*

— 4, 7 *Quod cum eo in aliena potestate, negotium gestum, etc.*

DIG. 14, 1 *De exercitoria actione.*

— 14, 3 *De institoria actione.*

— 14, 4 *De tributoria actione.*

— 15, 3 *De in rem verso.*

— 15, 4 *Quod jussu.*

(§1013) —— 17, 1 Mandati vel contra.
 —— 46, 1 De fidejussor. et mandatoribus.
 —— 46, 8 Ratam rem haberi et de ratihabitione.
 —— 50, 14 De proxeneticis.
 CODE, 2, 12 (13) De procuratoribus.
 —— 4, 25 De exercitoria et institoria actione.
 —— 4, 26 Quod cum eo qui in aliena potestate negotium gestum . . . vel de peculio seu quod jussu aut de in rem verso.
 —— 4, 35 Mandati.
 —— 4, 36 Si servus se emi mandaverit.
 —— 8, 40 (41) De fidejussor. et mandatoribus.
 —— 11, 57 (56) Ut nullus ex vicanis pro alienis debitibus vican. teneatur.
 Nov. 4 De fidejussor. et mandatoribus, etc.

(c) **Post-Justinian:**

THEOPHILUS, 3, 26 De mandato.
 —— 4, 7 Quod cum eo qui in aliena potestate est, negotium gestum, etc.

BAS. 8, 2 De procuratoribus, etc.
 —— 9, 11 De . . . ratam rem haberi.
 —— 14, 1 De mandatis, etc.
 —— 18, 1 De actione . . . adv. eum qui aliquem tab-

ernae suae administrandae praeposuit.
 —— 18, 2 De actione . . . adv. dominum patremve, cum scientibus servus vel filiusfamilias mercatur, etc.
 —— 18, 3 De actione . . . adv. patrem vel dominum . . . cum iis, qui in potestate . . . cum aliis contrahentes . . . in peculio, etc.
 —— 18, 5 De actione de peculio, quae adv. patrem vel dominum, etc.
 —— 18, 6 . . . De peculio actiones, etc.
 —— 18, 7 De actione, quae de in rem domini vel patris verso, etc.
 —— 18, 8 De his, quae jussu domini vel patris quis contrahit, etc.
 —— 26, 1 De fidejussor. et mandatoribus.
 —— 26, 2 Ut creditores . . . convenient . . . mandatores vel pecuniae constitutae reos vel fidejussores.
 —— 53, 1 De patronis et exercitoribus, etc.
 —— 54, 15 De proxeneticis.

II. Modern references:—

(a) **In general:**

COGGS *v.* BERNARD, Lord Raymond's Rep. 909.

GAVET, *De l'allegatio gestis* (Mélanges P. F. Girard, vol. i, p. 499, Paris, 1912).

LOUBERS, *L'action de in rem verso et les théories de la responsabilité civile*, Paris, 1912.

RAMADIER, *La représentation des cités d'après l'édit du préteur* (Études d'hist. jurid. off. à P. F. Girard, vol. i, p. 259 Paris, 1913).

SAVIGNY, *Das Obligationenrecht*, vol. ii, §§ 54–60.

WILLISTON, *Contracts for the benefit of a third person, in the Civil Law*, 16 Harv. Law Rev., p. 43.

(b) **Modern Codes:**

References are to the Civil Code, unless otherwise stated.

ARGENTINA, 1903–2019; code of Commerce, 221–81.

AUSTRIA, 1002–44.

CHILE, 2116–73; code of Commerce, 233–347.

FRANCE, 1984–2010; code of Commerce, 71–90.

GERMANY, 652–6, 662–76; code of Commerce, 88, 383–405; Schuster, German law, pp. 278, 303.

ITALY, 1737–63; code of Commerce, 349–87.

JAPAN, 643–56; code of Commerce, 29–41, 305–30.

LOUISIANA, 2985–3034.

MEXICO, 2342–2433; code of Commerce, 273–331.

PHILIPPINES (same as Spain, Civil Code).

PORTO RICO, 1611–41.

QUEBEC, 1701–61.

RUSSIA, 2291–2334.

SPAIN, 1709–39; code of Commerce, 88–115, 244–302.

SWITZERLAND, code of Obligations, 394–406, 425–39, 458–65.

III. See also *supra* §§ 1002, 1011; vol. ii, §§ 800–803.

Miscellaneous contracts: references.

§ 1014

I. Texts of Roman law:—

For English translations see *supra* §§ 945, 946, 948 951, 952, 955.

i. Affreightment.**(a) Ante-Justinian:**

GAIUS, 4, 71.

COD. THEOD. 13, 5 *De naviulariis*, *const.* 9, 26, 29, 32–4.

(b) Justinian:

INST. 4, 7 *Quod cum eo qui in aliena potestate . . . ges- tum, etc., § 2.*

(§1014) **DIG.** 14, 1 *De exercitoria actione*, frag. 1, § 15, frag. 7. **CODE.** 11, 2 (1) *De naviculariis, etc.*

Nov. 106, *De usuris nauticis.*

(c) **Post-Justinian:**

THEOPHILUS, 4, 7 *Quod . . . in aliena potestate, etc., § 2.*

BAS. 53, 1 *De . . . exercitoribus, etc.*

HEXABIBLOS, 2, 11 *De rebus nauticis.*

2. Banks and banking.

(a) **Ante-Justinian:**

GAIUS, 3, 131.

(b) **Justinian:**

DIG. 1, 12 *De officio praefecti urbi*, 1, § 9.

— 2, 13 *De edendo*, frag. 4, pr., frag. 9, § 2, frag. 10, § 1. — 2, 14 *De pactis*, frag. 9, 25, 27.

— 16, 3 *Depositi, etc.*, 7, § 2.

— 42, 5 *De rebus auctoritate judicis poss. seu vend.*, 24, § 2.

— 46, 3 *De solutionibus, etc.*, 39.

Nov. 136 *De argentariorum contractibus.*

EDICTA (in Appendix I to **Nov.**), 7 *Forma pragmatica de argentariorum contractibus.*

— 9 *De argentariorum contractibus.*

(c) **Post-Justinian:**

BAS. 23, 4 *De argentariorum contractibus.*

3. Insurance.

DIG. 22, 2 *De nautico faenore*, 5.

— 35, 2 *Ad legem Falci-diam*, 68.

4. Pacts (pacta).

(a) **Ante-Justinian:**

COD. **THEOD.** 3, 13 *De dotibus*, 4.

VATICAN FRAG. 264a, 263, 310.

(b) **Justinian:**

INST. 2, 7 *De donation.*, 2.

INST. 4, 6 *De actionibus*, 7–9.

DIG. 4, 8 *De receptis, etc.* frag. 11, § 3, frag. 13, § 1, frag. 27, § 7.

— 13, 5 *De pecunia constituta.*

— 13, 7 *De pigneratice actione, etc.*, 1.

— 20, 1 *De pignoribus et hypothecis, etc.*, 4.

CODE, 4, 18 *De pecunia constituta.*

— 4, 29 *Ad SC. Velleianum*, 25.

— 5, 11 *De dotis promis-sione, etc.*, 6.

— 8, 53 (54) *De donation.*, 35, § 5b.

**5. Public promises and vows
(*pollicitationes, vota*).**

DIG. 50, 12 *De pollicitationibus.*

BAS. 54, 13 *De pollicitationibus.*

**II. Modern references to all
miscellaneous contracts:—**

(a) In general:

PLATON, *Les banquiers dans la législation de Justinien*, Paris, 1912.

REGISTER, *Notes on commerce and commercial law*, 33 *Canadian Law Times*, p. 499.

SMITH, *Dictionary of Greek and Roman antiquities*³, "argentarii."

(b) Modern Codes:

References are to the Civil Code, unless otherwise stated.

ARGENTINA, *code of Commerce*, 492-557, 856-1260.

AUSTRIA, 1288-92.

CHILE, 2258; *code of Com-*

merce, 166-232, 512-601, 970-1083, 1261-1312.

FRANCE, 1964; *code of Commerce*, 273-310, 392-6.

GERMANY, *code of Commerce*, 781-897; Schuster, *German Civil Law*, pp. 312-13.

ITALY, 1951; *code of Commerce*, 417-53, 547-89, 604-41.

JAPAN, *code of Commerce*, 384-433, 590-640, 653-79.

LOUISIANA, 2755.

MEXICO, 2705-71; *code of 392-448, 727-93, 812-80.*

PHILIPPINES, same as Spain, *Civil Code.*

PORTO RICO, 1693-9, 1704-10.

QUEBEC, 1265, 2407-20, 2442-2593.

RUSSIA, 2199-2200.

SPAIN, 1791-7, 1802-7; *code of Commerce*, 380-438, 652-718, 737-805.

III. See also supra §§ 1002; vol. ii, §§ 804-8.

Quasi contracts: references.

§ 1015

I. Texts of Roman law:—

For English translations, see *supra §§ 945, 946, 948, 951, 952, 955.*

i. In general.

(b) Justinian:

INST. 3, 27 *De obligationibus quasi ex contractu.*

DIG. 44, 7 *obligationibus*, etc.

CODE, 3, 21 *Ubi agi oportet ratiociniis*, etc.

(c) Post-Justinian:

THEOPHILUS, 3, 27 *De obligationibus . . . quasi ex contractu*, etc.

**(\$1015) 2. Unauthorized agency
(negotiorum gestio).**

(b) Justinian:

INST. 3, 27 De oblig. quasi ex contractu, 1.

DIG. 3, 5 De negotiis gestis.

CODE, 2 18 (19) De negotiis gestis.

(c) Post-Justinian:

THEOPHILUS, 3, 27 De oblig. . . . quasi ex contractu, etc., 1.

BAS. 17, 1 De negotia aliena gerentibus.

— 17, 2 De actione qua petuntur sumtus utiliter facti.

**3. Money paid by mistake
(solutio indebiti, condicatio indebiti).**

(a) Ante-Justinian:

GAIUS, 3, 91.

(b) Justinian:

INST. 3, 14 Quibus modis re . . . obligatio, 1.

— 3, 27 De oblig. quasi ex contr., 6-7.

DIG. 12, 6 De condicione indebiti.

— 22, 6 De juris et facti ignoratia.

CODE, 1, 18 De juris et facti ignoratia.

— 4, 5 De condicione indebiti.

(c) Post-Justinian:

THEOPHILUS, 3, 14 Quibus modis re . . . obligatio, 1.

— 3, 27, De oblig. . . . quasi ex contr., etc., 6-7.

BAS. 2, 4 De facti et juris ignorantia.

— 24, 6 De eo qui in debitum solvit, etc.

4. Jettison and general average (lex Rhodia de jactu).

(a) Ante-Justinian:

PAULUS, Sent. 2, 7 Ad legem Rhodiam.

(b) Justinian:

INST. 2, 1 De rerum divisione, 47-8.

DIG. 14, 2 De lege Rhodia de jactu.

CODE, 11, 6 (5) De naufragiis.

(c) Post-Justinian:

THEOPHILUS, 2, 1 De rerum divisione, 47-8.

BAS. 53, 3 De naufragio, etc.

— 53, 8 Capita excerpti juris Rhodiorum navalis.

HEXABIBLOS, 2, 7. De . . . naufragio, etc.

— 2, 11 De rebus nauticis.

II. Modern references to all quasi contracts:—

(a) In general:

AMES, History of assumpsit, 4 Law Quart. Rev., 480, Harv. Law Rev., April and May, 1888.

ASHBURNER, *The Rhodian sea law*, Oxford, 1909.

AUSTIN, *Jurisprudence*³, vol. ii, pp. 944-8.

BARCLAY, Definition of general average, 7 *Law Quart. Rev.*, p. 22.

BENEDICT, *The Rhodian law*, 18 *Yale Law Journal*, p. 242.

COLUMBIAN INS. CO. v. ASHBY, 13 Peters (U. S. Sup. Ct. Rep.), 331.

DOWALL, Codification of the law of general average, 11 *Law Quart. Rev.*, p. 32.

LOWNDE, *Law of general average*⁵, London, 1912 (contains transl. of maritime codes of various nations).

OSSIG, *Röm. Wasserrecht*, Leipzig, 1898.

RUABON STEAMSHIP CO. v. LONDON ASSURANCE CO., House of Lords Appeal Cases (1900), 1.

SAVIGNY, *Obligationenrecht*, vol. ii, § 85.

— System, vol. iii, appendix viii.

SCHOMBERG, *Treatise on the maritime laws of Rhodes*, London, 1786.¹

(b) **Modern Codes:**

References are to the Civil Code, unless otherwise stated.

ARGENTINA, 818-32, 2322-44; code of Commerce, 1283-1350.

CHILE, 2284-2313; code of Commerce, 1150-67, 1084-1135.

FRANCE, 1370-81; code of Commerce, 397-429.

GERMANY, 677-87, 812-15; code of Commerce, 700-733; Schuster, *German Civil Law*, pp. 351, 361.

ITALY, 1140-50; code of Commerce, 642-59.

JAPAN, 697-708; code of Commerce, 641-52.

LOUISIANA, 2292-2314, 3424.

MEXICO, code of Commerce, 881-93, 915-44.

PHILIPPINES, same as Spain, Civil Code.

PORTO RICO, 1788-1802.

QUEBEC, 983, 1041-52, 2551-67.

SPAIN, 1887-1901; code of Commerce, 806-18, 840-69.

SWITZERLAND, code of Obligations, 419-24.

III. See also *supra* § 1002; vol. ii, §§ 809-12.

Torts or delicts: references.

§ 1016

I. Texts of Roman law:—
For English translations, see

supra §§ 945, 946, 948, 951, 952, 955.

¹ SHERMAN, Charles P., Argentine and Chilean law as to money paid by mistake, 6 *Georgetown Law Journal*, p. 8.

(§ 1016) 1. General principles of delicts; and miscellaneous delicts.

(a) *Ante-Justinian*:

XII TABLES, xii, 2.

GAIUS, iii, 182; iv, 75-81.

COD. HERMOGENIAN. Ex delictis defunctorum, etc.

COD. THEOD. 9, 20 Victum civiliter agere criminaliter posse.

(b) *Justinian*:

INST. 4, 1 De obligation. . . . ex delicto, etc., pr.

— 4, 8 De noxal. action.

DIG. 2, 9 Si ex noxal. causa, etc.

— 9, 4 De noxal. action.

— 44, 7 De obligation., etc.

— 47, 1 De privatis delictis.

CODE, 2, 16 (17) Ut nemini liceat sine judicis auctoritate signa imprimere rebus, quas alius tenet.

— 2, 34 (35) Si adv. delictum suum.

— 3, 27 Quando liceat sine judice . . . vindicare, etc.

— 3, 41 De noxal. action.

— 4, 17 Ex delictis defunctorum in quantum heredes conveniantur.

— 11, 6 (5) De naufragiis.

(c) *Post-Justinian*:

THEOPHILUS, 4, 1 De obligation. . . . ex delicto, etc., pr.

— 4, 8 De noxal. action.
BAS. 7, 15 Si dominus servum. . . ut noxae detur, etc.

— 10, 17 Si adv. delictum suum.

— 23, 2 Ne defuncti . . . a creditoribus injuria, etc.

— 24, 7 . . . in quantum heredes teneantur ex delictis defunctorum.

— 43, 7 De multis, quae ex condemnatione judicis veniunt.

— 53, 2 De nave in jus vocata.

— 60, 1 De pecuniariis poenis, etc.

— 60, 5 . . . quadrupes noxae deduntur.

— 60, 11 De privatis delictis.

— 60, 51 De poenis.

HEXABIBLOS, 1, 3 De actionibus, etc.

— 2, 11 De rebus nauticis.

— 5, 13 Quo tempore creditores adv. defuncti heredes agere possint.

2. Injury to the person (inuria).

(a) *Ante-Justinian*:

XII TABLES, viii, 1-4.

GAIUS, iii, 220-25.

PAULUS, Sent. 5, 4 De injuriis.

ULPIAN, Reg. 29 De injuriis.

COLLATIO MOSAIC. ET ROM.

2 De atroci injuria.

(b) **Justinian:**

INST. 4, 4 De injuriis.
 DIG. 9, 3 De his, qui effuderint vel dejecerint.
 — 47, 10 De injuriis et famosis libellis.
 CODE, 9, 35 De injuriis.
 — 9, 36 De famosis libellis.

(c) **Post-Justinian:**

THEOPHILUS, 4, 4 De injuriis.
 BAS. 60, 4 De his, qui quid effuderint vel dejecerint.
 — 60, 21 De injuriis et famosis libellis.
 — 60, 48 Lex Fabia de plagiariis.

3. **Theft (furtum).**(a) **Ante-Justinian:**

XII TABLES, viii, 12-17, 20.
 GAIUS, iii, 182-208.
 PAULUS, Sent. 2, 31 De furtis.
 COLLATIO MOSAIC. EΓ ROM. 7 De furibus, etc.

(b) **Justinian:**

INST. 4, 1 De obligation. . . . ex delicto, §§ 1-19.
 DIG. 13, 1 De condicione furtiva.
 — 47, 2 De furtis.
 — 47, 4 Si quis, qui testamento hereditatem subripuisse, etc.
 — 47, 5 Furti adv. nautas, caupones, stabularios.
 — 47, 6 Si familia furtum fecisse, etc.

— 47, 7 Arborum furtim (§ 1016) caesarum.

CODE, 4, 8 De condicione furtiva.

— 9, 39 De his qui latrones vel in aliis criminibus reos occultaverint.

(c) **Post-Justinian:**

THEOPHILUS, 4, 1 De obligation . . . ex delicto, §§ 1-19.
 BAS. 53, 1 De . . . nautis, et cauponibus, etc.
 — 60, 10 De condicione furtiva.
 — 60, 11 De furto.
 — 60, 14 De furto adv. caupones et stabularios.
 — 60, 15 Si familia furtum fecisse, etc.
 — 60, 20 De . . . ruina.

4. **Robbery (rapina).**(a) **Ante-Justinian:**

XII TABLES, viii, 12.
 GAIUS, iv, 209.
 PAULUS, Sent. 1, 14 De via publica.

— 5, 26 Ad legem Julianam de vi publica et privata.

NOV. VALENTINIAN. 8 De invasoribus.

(b) **Justinian:**

INST. 4, 2 Vi bonorum rapitorum.
 DIG. 43, 4 Ne vis fiat ei, qui in possessionem missus erit.

(§1016) —— 43, 16 *De vi et vi armata*. —— 2, 23a (*lex Aquilia*).
 —— 47, 8 *Vi bonorum raptorum*, etc.
 —— 48, 7 *Ad legem Julianam de vi privata*.
CODE, 8, 5 *Si per vim . . . absentis perturbata possessio*.
 —— 9, 12 *Ad legem Julianam de vi publica seu privata*.
 —— 9, 33 *Vi bonorum raptorum*.
 —— 9, 39 *De his qui latrones vel in aliis criminibus reos occultaverint*.

(c) **Post-Justinian:**

THEOPHILUS, 4, 2 *De vi bonorum raptorum*.
BAS. 51, 5 *Ne vis fiat ei, qui in possessione missus*, etc.
 —— 53, 3 *De . . . rapina*, etc.
 —— 58, 23 *Quod vi aut clam*.
 —— 60, 17 *De bonis raptis, . . . et de vi armata*.
 —— 60, 18 *Ex lege Julia de vi publica et privata*.

5. Damage to property (damnum injuria); lex Aquilia; negligence (culpa).

(a) **Ante-Justinian:**

XII TABLES, viii, §§ 5–16; ix, 9; x, 10.
GAIUS, iii, 210–19.
PAULUS, *Sent.* 1, 14 *Si via publica*.
 —— 1, 15 *Si quadrupes damnum intulerit*.

(b) **Justinian:**

INST. 4, 3 *De lege Aquilia*.
 —— 4, 9 *Si quadrupes pauperiem*, etc.
DIG. 9, 1 *Si quadrupes pauperiem*, etc.
 —— 9, 2 *Ad legem Aquiliam*.
 —— 39, 2 *De damno infecto et . . . projectionibus*.
 —— 47, 7 *Arborum furtim caesorum*.
 —— 47, 8 *Vi bonorum raptorum*.
CODE, 3, 35 *De lege Aquilia*.

(c) **Post-Justinian:**

THEOPHILUS, 4, 3 *De lege Aquilia*.
 —— 4, 9 *Si quadrupes pauperiem*, etc.
BAS. 60, 2 *Si quadrupes pauperiem*, etc.
 —— 60, 3 *De lege Aquilia*.
 —— 60, 20 *De . . . ruina*.
HEXABIBLOS, 6 1 *De damno*.
 —— *leges agrariae*, 4 *De quadrupedem depraedatione*.
 —— *leges agrariae*, 5 *de damno*.
 —— *leges agrariae*, 6 *de caedibus quadrupedum*.

6. Fraud (dolus, fraus).

(a) **Ante-Justinian:**

XII TABLES, viii, 19.
PAULUS, *Sent.* 1, 7 *De integri restituzione*.
 —— 1, 8 *De dolo*.

COD. GREGORIAN. 3 Si major,
etc.

COD. THEOD. 2, 14 De his,
qui potentiorum nomina in
lite praetendunt, etc.

— 2, 15 De dolo malo.

(b) **Justinian:**

DIG. 4, 3 De dolo malo.

— 11, 6 Si mensor falsum
modum dixerit.

— 42, 8 Quae in fraudem
creditorum facta sunt,
etc.

— 43, 5 De tabulis exhibi-
bendis.

— 43, 29 De homine libero
exhibendo.

— 43, 30 De liberis ex-
hibendis.

— 44, 4 De doli mali . . .
exceptione.

CODE, 2, 20 (21) De dolo
malo.

— 7, 75 De revocandis his
quae per fraudem alienata,
etc.

(c) **Post-Justinian:**

BAS. 9, 8 Quae in fraudem
creditorum facta, etc.

— 10, 3 De dolo malo.

— 31, 8 Si mulier ventris
nomine, etc.

— 51, 4 De doli mali . . .
exceptione.

— 60, 9 Si mensor falsum
modum dixerit.

7. **Intimidation (metus, vis).** (§ 1016)

(a) **Ante-Justinian:**

PAULUS, Sent. 1, 7 De inte-
gri restituzione.

COD. GREGORIAN. 2 De his
quae vi metusve causa,
etc.

(b) **Justinian:**

DIG. 4, 2 Quod metus causa,
etc.

— 44, 4 De . . . metus ex-
ceptione.

CODE, 2, 19 (20) De his qui vi
metusve causa, etc.

(c) **Post-Justinian:**

BAS. 10, 2 Quod metus causa,
etc.

— 51, 4 De . . . metus ex-
ceptione.

HEXABIBLOS, 1, 11 De neces-
sitate et vi.

II. **Modern references (all
torts or delicts):—**

(a) **In general:**

DE VILLIERS, Malice in the
English and Roman law of
defamation, 17 Law Quart.
Rev., p. 388.

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law, 13 Law Quart. Rev.,
p. 387.

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of torts in the Spanish
system, 6 Mich. Law Rev.,
p. 137.

(§ 1016) **ESMEIN**, La poursuite du vol, etc. (*Mélanges Esmein*, p. 244, Paris, 1886).

GIRARD, Les jurés de l'action d'injurés (*Mélanges Gérardin*, p. 255, Paris, 1907).

GRIFFITH, Allen *v.* Flood, sidelights from Roman law (*Journal of Compar. Legisl.*, 1899).

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— Review of this book by Muirhead, 2 Law Quart. Rev., p. 379.

HUVELIN, Sur un texte d'Alfenus Varus. — Dig. 9, 2, 52, 1 (*Mélanges P. F. Girard*, vol. i, p. 559, Paris, 1912).

IHERING, Schuldmoment im röm. Privatrecht.

— (The above work has been translated into French by MEULENAERE), *De la faute en droit privé*, Paris, 1880.

KENNILL v. ABBOTT, 4 Vesey sr., p. 802, 25 Eng. Ruling Cases, p. 480 (Fraud).

LABORDERIE, Essai sur la répression civile du furtum—“*condictio furtiva*,” 36 Rev. gén. de droit, p. 20.

MONRO, *Lex Aquilia*, London, 1898.

NABER, Ad noxalem injuriarum actionem (*Mélanges Gérardin*, p. 467, Paris, 1907).

PACCHIONI, A disputed point in the *lex Aquilia*, 4 Law Quart. Rev., p. 178.

PISSARD, Duci vel ferri jubere. La *ductio jussu praetoris* dans . . . les actions noxales (*Études d'hist. jurid. off. à P. F. Girard*, vol. i, p. 241, Paris, 1913).

ROLIN, *L'abordage*, Paris, 1899.

SAVIGNY, *Obligationenrecht*, vol. ii, §§ 82-4.

SERAFINI, Fraudulent preference in Roman law (*Mispoulet's review of this book in 4 Law Quart. Rev.*, p. 81).

SKOTTOWE, Roman law of damage, 10 Law Mag. and Rev., p. 47.

SLANDER and *libel*, 6 Am. Law Reg. and Rev., pp. 598, 599.

VILLIERS, Roman and Roman-Dutch law of injuries (translation of book 47, title 10, of Voet's *Commentaries*), London, 1899.

WALTON, Motive as an element in torts in the Common and in the Civil Law, 22 *Harvard Law Rev.*, p. 501.

WARMÉ, *De l'action Paulienne en droit romain*, Paris 1880 (fraud).

(b) **Modern Codes:**

References are to the Civil Code, unless otherwise stated.

ARGENTINA, 1107-70; code of Commerce, 1261-73.

AUSTRIA, 1293-1341.

CHILE, 2314-34; code of Commerce, 1129-49.

FRANCE, 1370, 1382-6; code of Commerce, 407.

GERMANY, 823-53; code of Commerce, 734-9; Schuster, German law, p. 345.

ITALY, 1151-6; code of Commerce, 660-65.

JAPAN, 709-24; code of Commerce, 650-51.

LOUISIANA, 2292, 2315-24.

MEXICO, 1458-87; code of Commerce, 901-14.

PHILIPPINES (same as Spain, Civil Code).

PORTO RICO, 1803-11.

QUEBEC, 983, 1053-5.

RUSSIA, 609-89.

SPAIN, 1887, 1902-10; code of Commerce, 826-39.

SWITZERLAND, code of Obligations, 41-67.

III. See also *supra* §§ 986, 1002, *infra* § 1017; *supra* vol. ii, §§ 449, 813-32.

Quasi delicts (including the liability of carriers and of inn-keepers): references.

I. **Texts of Roman law:**—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(b) **Justinian:**

INST. 4, 5 *De obligation.* . . . quasi ex delicto, etc.

DIG. 4, 9 *Naute caupones*, etc. — 5, 1 *De judiciis*, etc., frag. 15, § 1, frag. 16.

— 9, 2 *Ad legem Aquiliam*, 29, § 7.

— 9, 3 *De his, qui effuderint vel dejecerint*.

— 44, 7 *De obligation.*, etc., 5, §§ 4-6.

— 47, 5 *Furti adv. nautas, caupones*, etc.

— 47, 9 *De . . . naufragio*, etc.

CODE, 11, 2 (1) *De naviculariis*, etc.

(c) **Post-Justinian:**

THEOPHILUS, 4, 5 *De obligation.* . . . quasi ex delicto, etc.

BAS. 53, 1 *De . . . nautis et cauponibus*, etc.

— 53, 3 De . . . naufrago, etc.
 — 60, 4 De his qui quid effuderint vel dejecerint.
 — 60, 14 De furto adv. caupones, etc.

II. Modern references:—

(a) **In general:**

AUSTIN, *Jurisprudence*³, vol. ii, pp. 944–8.

COGGS *v.* BERNARD, Lord Raymond's Rep. 909.

LANE *v.* COTTON, 12 Mod. Rep. 484, 4 *Taunt. Rep.* 628.

MOORE, *Carriers*², New York, 1914.

MORS. *v.* SLEW, T. Raymond's Rep. 220.

NUGENT *v.* SMITH, 1 Com. Pleas Div. 423.

SAVIGNY, *Obligationenrecht*, vol. ii, § 85.

(b) **Modern Codes:**

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AUSTRIA, 970, 1293–1341.

CHILE, 2013–21, 2314–34.

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GERMANY, 701–4, 823–53; code of Commerce, 429–607; Schüster, German law, pp. 154–60.

ITALY, 1151–6, 1629–31, 1866–8.

JAPAN, 709–24; code of Commerce, 336–9, 354.

LOUISIANA, 2751, 2292, 2315–24, 2965.

MEXICO, 1458–9, 2512.

PHILIPPINES (same as Spain).

PORTO RICO, 1504–5, 1685–6, 1803–11.

QUEBEC, 983, 1053–5, 1672, 1814.

RUSSIA, 609–89.

SPAIN, 1601–2, 1783–4, 1887, 1902–10.

SWITZERLAND, code of Obligations, 41–67, 447–9, 487.

III. See also *supra* §§ 1002, 1016; vol. ii, §§ 833–4.

§ 1018 Civil procedure: references.

I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, i–iii; viii, 22–3; ix, 3–4.

LEX Acilia repetundarum, 122 B.C. (translated by Hardy, *Six Roman laws*, pp. 10–34, Oxford, 1911).

GAIUS, iv, 1–187.

PAULUS, *Sent.* 1, 1a.

— 1, 2 De procuratoribus et cognitoribus.

- 1, 3 De procuratoribus.
- 1, 4 De negotiis gestis.
- 1, 5 De calumniatoribus.
- 1, 9a.
- 1, 10 De plus petendo.
- 1, 11 De satisdando.
- 1, 13a De judicato.
- 1, 19 Quemadmodum actiones per initiationem duplentur.
- 2, 1 De . . . jurejurando.
- 5, 5a De effectu sententiatarum et finibus litium.
- 5, 5b.
- 5, 6 De interdictis.
- 5, 15 De testibus.
- 5, 16 De quaestionibus servorum.
- 5, 28 Ad legem Julianam repetundarum.
- 5, 32 Quando appellandum est.
- 5, 33 De cautionibus et poenis appellationum.
- 5, 34 De litteris dimissoriis.
- 5, 35 De reddendis causis appellationum.
- 5, 36 Post provocationem.
- 5, 37 De meritis appellationibus.
- COD. GREGORIAN. 1, 12 De postulando.
- 2 De judiciis.
- 3 De jurejurando.
- 3 De petitione hereditatis.
- 3, 12 Si certum peta- (\$1018) tur.
- 10 Quibus res judicata non noceat.
- 10 De confessis.
- COD. HERMOGENIAN. Ubi agi debeat.
- De calumniatoribus et plus petendo.
- De instrumentis.
- De jurejurando.
- COD. THEOD. 1, 20 De officio judicum civilium.
- 2, 1 De jurisdictione et ubi quis convenire debeat.
- 2, 2 Ne in sua causa quis judicet.
- 2, 3 De omissa actionis impetracione.
- 2, 4 De denuntione vel editione rescripti.
- 2, 6 De temporum cursu, etc.
- 2, 9 De pactis et transactionibus.
- 2, 10 De postulando.
- 2, 11 De erroribus ad vocatorum.
- 2, 12 De cognitoribus et procurator.
- 2, 13 De actionibus ad potentes translatis.
- 2, 18 De judiciis.
- 4, 5 De litigiosis.
- 4, 16 De re judicata.
- 4, 17 De sententiis ex periculo recitandis.
- 4, 18 De fructibus et litis expensis.

(§ 1018) —— 4, 19 De usuris rei judicatae.
 —— 4, 21 Quorum bonorum.
 —— 4, 22 Unde vi.
 —— 4, 23 Utrubi.
 —— 9, 10 Ad legem Julianam de vi publica et privata.
 —— 9, 11 De privati carceris custodia.
 —— 11, 29 De relationibus.
 —— 11, 30 De appellationibus.
 —— 11, 31 De reparationibus appellationum.
 —— 11, 32 De secundo labsu.
 —— 11, 34 De his qui per metum judicis non appellaverunt.
 —— 11, 35 Si pendente appellatione mors venerit.
 —— 11, 36 Quorum appellationes non recipiantur.
 —— 11, 37 Si de momento fuerit appellatum.
 —— 11, 38 De possession. ab eo, qui bis provocaverit, transferendo.
 —— 11, 39 De fide testium et instrumentorum.
 —— 12, 9 De his, quae ex publica conlatione inflata sunt, non usurpandis.
 —— 15, 14 De infirmandis quae sub tyrannis aut barbaris gesta sunt.

COLLATIO MOSAIC. ET ROM.,
 8 De falso testimonio.
 —— 9 De familiaris testimonio non admittendo.

Nov. MARCIAN. 1 Neminem exhiberi de provincia nisi ad relationem judicis a quo fuerit appellatum.

Nov. THEOD. 10 De postulando et perpetuanda ad vocacione.

— 13 Contra sententias, etc.

Nov. VALENTINIAN. 2 De postulando.

VATICAN FRAG. 317-41 De cognitor. et procurator.

(b) **Justinian:**

INST. 4, 6 De actionibus.
 —— 4, 10 De his quos agere possumus.
 —— 4, 11 De satisfactionibus.
 —— 4, 12 De perpetuis et temporalibus actionibus et quae ad heredes vel in heredes transeunt.
 —— 4, 13 De exceptionibus.
 —— 4, 14 De replicationibus.
 —— 4, 15 De interdictis.
 —— 4, 16 De poena temere litigantium.
 —— 4, 17 De officiis judicis.

DIG. 1, 21 De officio ejus cui mandata est jurisdictione.

— 2, 1 De jurisdictione.
 —— 2, 3 Si quis jus dicenti non obtemperaverit.
 —— 2, 4 De in jus vocando.
 —— 2, 5 Si quis in jus vocatus non ierit sive quis eum vocaverit, quem ex edicto non debuerit.

— 2, 6 In jus vocati ut eant aut satis vel cautum dent.

- 2, 7 Ne quis eum qui in jus vocabitur vi eximat.
- 2, 8 Qui satisdare cogantur vel jurato promittant, etc.
- 2, 9 Si ex noxali causa agatur, quemadmodum cavetur.
- 2, 10 De eo per quem factum erit quominus quis in judicio sistat.
- 2, 11 Si quis cautionibus in judicio sistendi causa, etc.
- 2, 13 De edendo.
- 3, 1 De postulando.
- 3, 3 De procuratoribus, etc.
- 3, 6 De calumniatoribus.
- 4, 7 De alienatione judicii mutandi causa facta.
- 5, 1 De judiciis.
- 11, 1 De interrogationibus, etc.
- 12, 2 De jure jurando, etc.
- 12, 3 De in item jurando.
- 16, 3 Depositum vel contra, 1, § 26.
- 21, 3 De exceptione rei venditae et traditae.
- 22, 3 De probationibus et praesumptionibus.
- 22, 4 De fide instrumentorum, etc.
- 22, 5 De testibus.
- 42, 1 De re judicata et de effectu sententiarum et de interlocutionibus.
- 42, 2 De confessis. (§ 1018)
- 42, 4 Quibus ex causis in possessione eatur.
- 42, 5 De rebus auctoritate judicis possidendis seu vendundis.
- 43, 1 Interdictis sive extraordinariis actionibus, etc.
- 43, titles 2-23 (give a list of all the interdicts, such as Quorum bonorum, Utrubi, etc.).
- 44, 1 De exceptionibus, praescriptionibus, et praejudiciis.
- 44, 2 De exceptione rei judicatae.
- 44, 3 De diversis praescriptionibus, etc.
- 44, 4 De doli mali et metus exceptione.
- 44, 5 Quarum rerum actio non datur.
- 44, 6 De litigiosis.
- 46, 5 De stipulationibus praetoriis.
- 46, 7 Judicatum solvi.
- 48, 20 De bonis damnatorum.
- 49, 1 De appellationibus et relationibus.
- 49, 2 A quibus appellari non licet.
- 49, 3 Quis a quo appelletur.
- 49, 4 Quando appellandum sit et intra quae tempora.

(§1018) —— 49, 5 De appellatiōnibus recipiendis vel non.
 —— 49, 6 De libellis dimissoriis, etc.
 —— 49, 7 Nihil innovari appellatione interposita.
 —— 49, 8 Quae sententiae sine appellatione rescindantur.
 —— 49, 9 An per alium causae appellationum reddi possunt.
 —— 49, 10 Si tutor curator magistratusve creatus appellaverit.
 —— 49, 11 Eum qui appellaverit in provincia defendi.
 —— 49, 12 Apud eum, a quo appelleatur, aliam causam agere compellendum.
 —— 49, 13 Si pendente appellatione mors intervenerit.
 —— 50, 13 De variis et extraordinariis cognitionibus et si judex litem suam fecisse dicetur.

CODE, 1, 20 Quando libellus principi datus litis contestationem facit.

— 1, 21 Ut lite pendente post provocationem . . . nulli liceat imperatore supplicare.

— 1, 25 De his qui ad statuas confugint.

— 1, 45 De officio civilium judicium.

— 1, 47 De officio diversorum judicium.

—— 1, 48 Ut omnes tam civiles quam militares judices, etc.

—— 1, 50 De officio ejus qui vicem alicujus judicis obtinent.

—— 1, 53 De contractibus judicum . . . et inhibendos donationibus in eos, etc.

—— 1, 54 De modo multarum quae ab judicibus infliguntur.

—— 2, 1 De edendo.

—— 2, 2 De in jus vocando.

—— 2, 3 De pedaneis judicibus.

—— 2, 6 De postulando.

—— 2, 9 (10) De errore advocatorum vel libellos seu preces concipientum.

—— 2, 12 (13) De procuratoribus.

—— 2, 13 (14) Ne liceat potentioribus patrocinium litigantibus praestare vel actiones in se transferre.

—— 2, 14 (15) De his, qui potentiorum nomine titulos praediis adfigunt vel eorum nomina in lite praetendunt.

—— 2, 16 (17) Ut nemini liceat sine judicis auctoritate signa imprimere rebus, quas alius tenet.

—— 2, 17 (18) Ne fiscus vel res publica procurationem alicui patrocinii causa in lite praestat.

- 2, 26 (27) Si adversus rem judicatam.
- 2, 46 (47) Ubi et apud quem cognitio restitutionis, etc.
- 2, 47 (48) De . . . judicio in integrum restitutio.
- 2, 48 (49) Etiam per procurator. . . . in integrum restitutionis, etc.
- 2, 49 (50) In integrum restitutione postulata, etc.
- 2, 52 (53) De temporibus in integrum restitutionis, etc.
- 2, 54 (55) De alienatione judicii mutandi causa facta.
- 2, 57 (58) De formulis et impetratiōne actionum sublatiis.
- 2, 58 (59) De jure jurando propter calumniam dando.
- 3, 2 De sportulis et sumptibus in diversis judiciis faciendis et de executorialibus litium.
- 3, 4 Qui pro sua jurisdictione judices dare, etc.
- 3, 5 Ne quis in sua causa judicet, etc.
- 3, 6 Qui legitimam personam in judiciis habent vel non.
- 3, 7 Ut nemo invitatus agere vel accusare cognatur.
- 3, 8 De ordine judiciorum.
- 3, 9 De litis contestatione.
- 3, 10 De plus peti- (§ 1018) tionibus.
- 3, 13 De jurisdictione, etc.
- 3, 19 Ubi in rem actio exerceri debet.
- 3, 21 Ubi agi oportet ratiociniis, etc.
- 3, 22 Ubi causa status agi debeat.
- 3, 23 Ubi quis de curiali vel cohortali aliave condicione conveniatur.
- 3, 24 Ubi senatores vel clarrissimi civiliter vel criminaliter conveniantur.
- 3, 25 In quibus causis militantes fore praescriptio- tione uti non possunt.
- 3, 27 Quando liceat sine judice . . . vindicare se, etc.
- 3, 40 De consortibus ejus litis.
- 3, 42 Ad exhibendum.
- 4, 1 De . . . jurejurando.
- 4, 2 Si certum petatur.
- 4, 19 De probationibus.
- 4, 20 De testibus.
- 4, 21 De fide instrumen- torum, etc.
- 4, 22 Plus valere quod agitur, etc.
- 4, 31 De compensationi- bus.
- 5, 53 De in item jurando.
- 5, 61 De actore a tu- tore seu curancio dando.

(§1018) CODE, 5, 75 De magistratibus
conveniendis.

— 7, 42 De sententiis praefectorum praetorio.

— 7, 43 Quomodo et quando judex sententiam proferre debet, etc.

— 7, 44 De sententiis ex periculo recitandis.

— 7, 45 De sententiis et interlocutionibus omnium judicium.

— 7, 46 De sententia quae sine certa quantitate prolatâ est.

— 7, 47 De sententiis, quae pro eo quod interest proferuntur.

— 7, 48 Si non a competenti judice judicatum esse dicatur.

— 7, 49 De poena judicis qui male judicavit, vel ejus, qui judicem vel adversarium corrumpere curavit.

— 7, 50 Sententiam rescindi non posse.

— 7, 51 De fructibus et litis expensis.

— 7, 52 De re judicata.

— 7, 53 De executione rei judicatae.

— 7, 54 De usuris rei judicatae.

— 7, 55 Si plures una sententia condemnati sunt.

— 7, 56 Quibus res judicata non nocet.

— 7, 57 Comminationes, epistulas, pragmata, subscriptiones auctoritatem rei judicatae non habere.

— 7, 58 Si ex falsis instrumentis vel testimoniis judicatum erit.

— 7, 59 De confessis.

— 7, 60 Inter alios acta vel judicata aliis non nocere.

— 7, 61 De relationibus.

— 7, 62 De appellations, etc.

— 7, 63 De temporibus . . . appellations, etc.

— 7, 64 Quando provocare necesse non est.

— 7, 65 Quorum appellations non recipiantur.

— 7, 66 Si pendente appellatione mors intervenerit.

— 7, 67 De his qui per metum judicis non appellaverunt.

— 7, 68 Si unus ex pluribus appellaverit.

— 7, 69 Si de momentaria possessione fuerit appellatum.

— 7, 70 Ne liceat in una eadem causa tertio provocare, etc.

— 7, 71 Qui bonis cedere possunt.

— 7, 72 De bonis auctoritate judicis possidendis seu venumdandis, etc.

— 8, 1 De interdictis.

- 8, titles 2–9 (give a list of interdicts such as *Quorum bonorum*, *Unde vi*, etc.).
- 8, 35 (36) *De exceptionibus sive praescriptionibus*.
- 8, 36 (37) *De litigiosis*.
- 9, 5 *De privatis carceribus inhibendis*.
- 9, 31 *Quando civilis actio criminali praejudicat et an utraque ab eodem exerceri*.
- 12, 52 (53) *De apparitoribus praefect. praetorio, etc.*
- 12, 53 (54) *De apparitoribus praefecti urbis*.
- 12, 54 (55) *De apparitoribus magistrorum militum, etc.*
- 12, 56 (57) *De apparitoribus comitis Orientis*.
- 12, 58 (59) *De apparitoribus praefecti annonae*.
- 12, 60 (61) *De exsecutoribus, etc.*
- 12, 63 (64) . . . *Judicium litterarum, etc.*
- Nov. 8 *Ut judices sine quoquo suffragio fiant*.
- 20, *De administrantibus officiis in sacris appellacionibus*.
- 23 *De appellacionibus et intra quae tempora debet appellari*.
- 41 *Lex ut bonus*.
- 47 *Ut praeponatur imperatoris nomen documentis, et ut Latinis litteris (§ 1018) apertius tempora perscribantur*.
- 49 *De his qui ingrediuntur ad appellationem . . . et de jurejurando dilationis, etc.*
- 50 *Appellationes ex quinque provinciis Caria et Cypro Cycladibus insulis et Mysia et Scythia apud quem oporteat examinari*.
- 51 *Scenicas . . . si iurandum dent, etc.*
- 53 *De exhibendis . . . et ut qui conveniuntur post vicesimam diem praesentur judicibus . . . et ante litis congestionem . . . et de hypothecis appellantur, etc.*
- 69 *Ut omnes oboediant judicibus provinciarum, etc.*
- 71 *Ut . . . clarissimis . . . in pecuniariis licere causis et per procuratorem et per se litigare*.
- 75 *De appellacionibus Siciliae*.
- 79 *Apud quos oportet causam dicere monachos, etc.*
- 82 *De judicibus . . . et cum jurejurando . . . et ut appellaciones, etc.*
- 83 *Ut clerici apud proprios episcopos primum conveniantur et post haec apud civiles judices*.
- 90 *De testibus*.

(§1018) Nov. 93 De appellationibus. — 111 De litigiosis, etc. — 113 In medio litis non sacras formas aut sacras iussiones, sed secundum generales leges dirimi negotia. — 115 Ut cum de appellatione cognoscitur secundum illas leges debeat judicari quae tempore datae sententiae obtinebant, non secundum eas quae postea promulgatae sunt, etc. — 124 Ut litigantes jurent quia neque promiserunt dare judicibus neque dabunt, et de sportulis, etc. — 125 Ut judices non expectent iussionem, sed quae videntur eis decernant. — 126 Exemplum sacrae legis de appellationibus. — 152 Ne sacrae formae quae de publicis procedunt aliter valeant nisi si . . . insinuatae, etc.

CONST. DISPERSAE (in Appendix to the Novels), 4 Ne quis metetur, etc.

(c) **Post-Justinian:**

THEOPHILUS, iv, titles 6, 10-17. For list of titles, see supra "b", Justinian, INST.

ECLOGA, 14 De testibus, etc.

PROCHIRON, 27 De testibus.

EPANAGOGA, 7 De magistribus, etc. — 11 De ordine judiciorum. — 12 De testibus. — 13 De instrumentis.

BAS. 6, 24 De officio iuridici . . . et jurisdictio.

— 7, 3 De ordine judiciorum et de jurisdictione. — 7, 4 De executoribus, etc. — 7, 5 De judicibus et ubi quisque agere et conveniri, etc. — 7, 6 De judiciis et sumtibus eorum, et pluspetitione et mora, et sportulis.

— 7, 7 Si quis jus dicenti non obtemperaverit.

— 7, 8 De his, qui in jus vocati sequi debent aut non debent.

— 7, 9 Ne liceat potentibus personis patrocinium litigantibus praestare, vel actiones in se transferre.

— 7, 10 De his, qui potentiorum nomine titulos praediis affigunt, vel eorum nomina in lites praetendunt.

— 7, 11 Ut nemo, privatus titulos praediis . . . vel alienis imponat, aut nomen regium suspendat, et ne fiscus, etc.

— 7, 12 In jus vocatus ut cautionem praestet.

— 7, 13 Ne quis eorum, qui in jus vocatur, vi eximat.

- 7, 14 Qui satisdare coguntur, vel jurato promittunt, . . . et de formulis, et de jurejurando propter calumniam dando.
- 7, 16 De milliaribus definitis peregre profecturo, etc.
- 7, 18 De edendo.
- 7, 19 De his, qui legitimam personam in judiciis habeant, vel non; et ut nemo invitus agere vel accusare cogatur.
- 8, 1 De postulando.
- 8, 2 De procuratoribus et defensoribus.
- 9, 1 De appellationibus.
- 9, 2 De his, qui in causis appellationum officia administrant.
- 9, 3 De re judicata, etc.
- 9, 4 De confessis.
- 9, 7 De rebus auctoritate judicium possidendis aut venumdandis, etc.
- 9, 10 Cautio judicati sive condemnationis.
- 10, 9 Si adversus rem judicatam.
- 19, 12 De exceptione rei venditae et traditae.
- 21, 1 De testibus, etc.
- 22, 1 De probationibus et praesumptionibus, et fide instrumentorum, etc.
- 22, 3 De privatis scripturis, quae a reo proferuntur.
- 22, 4 Quomodo instru- (\$1018) mentis, quae apud judices insinuata sunt, fidem adhiberi oporteat.
- 22, 5 De jurejurando, sive voluntario, hoc est, delato sive necessario, sive judiciali.
- 22, 6 De jurejurando in item.
- 23, 3 De usuris et fructibus et causis et omni accessione et mora.
- 38, 15 De jurejurando in item.
- 42, 4 De interrogatione et responsione in jure facta.
- 43, 4 De praetoriis stipulationibus.
- 43, 5 De litigiosis.
- 51, 1 De exceptionibus et praejudiciis.
- 51, 2 De rei judicatae exceptione.
- 51, 4 De doli mali et metus exceptione.
- 51, 5 Ne vis fiat ei, qui in possession. missus erit.
- 53, 2 De nava.
- 54, 11 De decretis, etc.
- 54, 14 De diversis et extraordinariis cognitionibus, et si judex item suam fecisse dicatur.
- 54, 32 Quo quisque ordine conveniatur.
- 54, 35 De his, qui ex officio . . . conveniuntur.

(§1018) BAS. 56, 19 Ne sacrae formae de causis publicis emissae aliter valeant, quam si insinuatae fuerint, etc.
 — 58, 14 De interdictis.
 — 58, titles 15-17 (contain a list of interdicts).
 — 60, 50 De quaestione.
 — 60, 55 Ut ne sint privati carceres.

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 — (preface, second section), *Condemnatio adv. judices proposita a Leone et Alexandro . . . principibus*.
 — 1, 2 De actore et reo.
 — 1, 4 De judiciali sententia et re judicata.
 — 1, 6 De testibus.
 — 1, 7 De jurejurando.
 — 1, 8 De instrumentis.
 — 2, 3 De repetitione et amissione.

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¹ IRETON, *Hearsay evidence in Europe*, 66 U. S. Law Review, p. 1.

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(b) **Modern Codes:**

See the Codes of Civil Procedure of the various countries.

III. See also *infra* § 1019; supra vol. ii, §§ 716, 754, 835-72.

The Roman judicial organization (including the courts, § 1019 holidays, bar, and notaries): references.

A. Courts and judicial organization.

I. Texts of Roman law:—

For English translations, see supra §§945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

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—— 1, 6 De officio praefecti urbis.

—— 1, 8 De officio quaestoris.

—— 1, 12 De officio proconsulis et legati.

—— 1, 13 De officio comitis Orientis.

—— 1, 15 De officio vicarii.

—— 1, 16 De officio rectoris provinciae.

—— 1, 17 De officio rationalis, etc.

—— 1, 18 De officio praefecti vigilum.

—— 1, 20 De officio judicum civilium.

—— 1, 21 De officio judicum militarium.

—— 1, 22 De officio judicum omnium.

—— 1, 29 De defensoribus civitatum.

—— 1, 33 De adssessoribus, etc.

—— 6, 4 De praetoribus et quaestoribus.

(§ 1019) —— 6, 6 *De consulibus, praefectis militum et patriciis.*
 —— 6, 7 *De praefectis praetorio sive urbis et magistris militum.*
 —— 6, 12 *De comitibus consistorianis.*
 —— 6, 17 *De comitibus qui provincias regunt.*
 —— 6, 18 *De comitibus vacantibus.*
 —— 6, 19 *De consularibus et praesidibus.*
 —— 8, 8 *De executoribus, etc.*
 —— 12, 12 *De legatis, etc.*
 Nov. MARJORIAN. 3 *De defensoribus civitatum.*
 Nov. VALENTINIAN. 22 *De officio . . . praefectorum praetorio.*

(b) **Justinian:**

DIG. 1, 2 *De origine . . . magistratum, etc., §§ 13-34.*
 —— 1, 9 *De senatoribus.*
 —— 1, 10 *De officio consulis.*
 —— 1, 11 *De officio praefecti praetorio.*
 —— 1, 12 *De officio praefecti urbi.*
 —— 1, 13 *De officio quaestoris.*
 —— 1, 14 *De officio praetorum.*
 —— 1, 15 *De officio praefecti vigilum.*

—— 1, 16 *De officio proconsulis et legati.*
 —— 1, 17 *De officio praefect. Augustalis.*
 —— 1, 18 *De officio praesidis.*
 —— 1, 19 *De officio procuratoris Caesaris.*
 —— 1, 21 *De officio ejus cui mandata est jurisdiction.*
 —— 1, 22 *De officio assessorum.*
 —— 50, 15 *De censibus.*
 CODE, 1, 4 *De episcopali audiencia.*
 —— 1, 19 *De precibus imperatori offerendis et de quibus rebus supplicare liceat vel non.*
 —— 1, 26 *De officio praefectorum praetorii Orientis et Illyrici.*
 —— 1, 27 *De officio praefecti praetorio Africæ et de omni ejusdem dioceos statu.*
 —— 1, 28 *De officio praefecti urbis.*
 —— 1, 30 *De officio quaestoris.*
 —— 1, 35 *De officio proconsulis, et legati.*
 —— 1, 36 *De officio comitis Orientis.*
 —— 1, 37 *De officio praefecti Augustalis.*
 —— 1, 38 *De officio vicarii.*
 —— 1, 39 *De officio praetorum.*
 —— 1, 40 *De officio rectoris provinciae.*

- 1, 43 De officio praefecti vigilum.
- 1, 44 De officio praefecti annonae.
- 1, 45 De officio civilium judicium.
- 1, 47 De officio diversorum judicium.
- 1, 48 Ut omnes tam civiles quam militares judices, etc.
- 1, 50 De officio ejus qui vicem alicujus judicis obtinet.
- 1, 51 De adsestoribus.
- 1, 52 De annonis et . . . assessorum, etc.
- 1, 53 De contractibus judicium . . . et inhibendis donationibus in eos, etc.
- 1, 54 De modo multarum quae ab judices infliguntur.
- 1, 55 De defensoribus civitatum.
- 1, 56 De magistratibus municipalibus.
- 1, 57 De officio judicis Alexandriæ.
- 2, 3 De pedaneis judicibus.
- 3, 4 Qui pro sua jurisdictione judices dare, etc.
- 3, 5 Ne quis in sua causa judicet, etc.
- 3, 8 De ordine judiciorum.
- 3, 14 Quando imperator inter pupillos vel viduas vel miserabiles personas (§ 1019) cognoscat, etc.
- 3, 26 Ubi causae fiscales vel divinae domus hominumque ejus agantur.
- 7, 42 De sententiis praefectorum praetorio.
- 12, 2 De praetoribus, etc.
- 12, 3 De consulibus . . . et de praefectis, et magistris militum et patriciis.
- 12, 4 De praefectis praetorio, etc.
- 12, 6 De quaestoribus, magistris officiorum comitibus sacrarum largitionum, etc.
- 12, 10 De comitibus consistorianis.
- 12, 25 (26) De castrensianis et ministerianis.
- 12, 52 (53) De apparitoribus praefectum praetorio, etc.
- 12, 53 (54) De apparitoribus praefecti urbis.
- 12, 54 (55) De apparitoribus magistrorum militum.
- 12, 56 (57) De apparitoribus comitis Orientis.
- 12, 58 (59) De apparitoribus praefecti annonae.
- 12, 59 (60) De diversis officiis et apparitoribus judicum, etc.
- 12, 60 (61) De exsecutoribus.

(§1019) — 12, 63 (64) . . . Insinuatores constitutionum et aliarum sacrarum vel judicialium litterarum, etc.

Nov. 13 De praetoribus populi.

— 15 De defensoribus civitatum.

— 17 De mandatis principum.

— 20 De administrantiibus officiis in sacris appellationibus.

— 24 De praetore Pisidiae.

— 25 De praetore Lycaonie.

— 26 De praetore Thraciae.

— 27 De comite Isauriae.

— 28 De moderatore Helenoponti.

— 29 De praetore Paphlagoniae.

— 30 De proconsule Cappadociae.

— 69 Ut omnes oboediant judicibus provinciarum, etc.

— 80 De quaestore.

— 83 Ut clerci apud proprios episcopos primum convenientur et post haec apud civiles judices.

— 86 Ut differentes judices audire interpellantium allegationes cognatur ab episcopis hoc agere, etc.

— 95 De administratoribus.

— 96 De executoribus, etc.

— 102 De moderatore Arabiae.

— 103 De proconsule Palaeisticae.

— 104 De praetore Siciliae.

— 105 De consulibus.

— 114 Ut divinae jussiones subscriptionem habeant gloriosi quaestoris.

— 149 Ut praesides provinciarum . . . ex suppliacione episcoporum, etc.

— 151 Ne curialis aut officialis sistatur aut in judecatur sine . . . imperiali jussu praefectis insinuando.

— 152 Ne sacrae formae quae de publicis procedunt aliter valeant nisi . . . praefectis praetorio insinuatae, etc.

— 161 De praesidibus.

EDICTA (in Appendix to Novels), 4 De magistratu Phoeniciae, etc.

— 8 De Ponticae dioceseos vicario.

(c) **Post-Justinian:**

EPANAGOGA, 2 De imperatore.

— 5 De quaestore.

— 6 De reliquis magistratibus.

— 7 De . . . magistratibus, etc.

BAS. 6, 1 De magistratibus, etc.

— 6, 2 De consulibus et proconsulibus, et legatis, etc.

- 6, 3 . . . ut praesides, etc.
- 6, 4 De officio praefectorum urbis et . . . praefecti praetorio.
- 6, 5 De praefecto vigilum seu praetore plebis.
- 6, 6 De officio quaestoris, etc
- 6, 7 De officio praetorum.
- 6, 8 De praetore Pisidae.
- 6, 9 De praetore Lycaoniae.
- 6, 10 De praetore Thraciae.
- 6, 11 De comite Isauriae.
- 6, 12 De moderatore Helenoponti.
- 6, 13 De praetore Paphlagoniae.
- 6, 14 De descriptione quattuor praesidum Armeniae.
- 6, 15 De moderatore Arabiae.
- 6, 16 De proconsule Cappadociae.
- 6, 17 De proconsule Palæstinae.
- 6, 18 De defensoribus.
- 6, 19 De vicariis, etc.
- 6, 20 Ut . . . dux vel biocolyta nullam licentiam habeat . . . cum civiles magistratus idonei sint, etc.
- 6, 21 Ut omnes obedient præsidibus, etc.
- 6, 22 Ut praesides inter- (§ 1019) pellantis jura audire ab episcopis cogantur, etc.
- 6, 23 De procuratore sive rationali, nunc logotheta.
- 6, 24 De officio juridici et iis quibus mandata est jurisdiction, et de officio assessorum.
- 6, 25 De praepositis sacri cubiculi, etc.
- 7, 1 De judicibus ordinariis et . . . ne apud assessorum litium contestatione, fiant, etc.
- 7, 4 De executoribus, etc.
- 56, 19 Ne sacrae formae . . . aliter valeant quam si . . . praefectis praetorio insinuatae, etc.
- 60, 43 De lege Julia, quae intenditur adv. magistratus vel judices vel assessorum in judicio furantes.

B. Adjournments, postponements, dies non, holidays.

I. Texts of Roman law: — For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

- COD. THEOD. 2, 7 De dilatione.
- 2, 8 De feriis.
- 11, 33 De dilationibus ex consensu.
- 15, 6 De Maiuma.

(§ 1019) (b) **Justinian:**

DIG. 2, 12 De feriis et dilationibus, etc.

CODE, 3, 11 De dilationibus.

— 2, 12 De feriis.

— 11, 46 (45) De Maiuma.

(c) **Post-Justinian:**

BAS. 7, 17 De diebus feriatis sive quietis a litibus, et dilationibus, etc.

C. Courts, judicial organizations, adjournments, postponements, dies non, holidays: modern references.

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— Droit romain⁵, p. 981.

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MACKENZIE, Roman law⁷, pp. 349-59.

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— (French transl. by GIRARD), *Droit public romain*, vol. vii, pp. 266-74.

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PETIT, *Droit romain*, §§ 708-13.

ROBY, Roman private law, vol. ii, pp. 312-26, 332-3.

SAVIGNY, System, vol. vi, appendix 15.

WILLEMS, *Droit public romain*⁷, pp. 33, 144, 205-79, 298-324, 465-77, 561-607, 631-41.

D. Bar and notaries.

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

GAIUS, i, 184; iv, 21, 25, 82-5, 101.

PAULUS, Sent. 1, 2 De procuratoribus, etc.

COD. THEOD. 2, 10 De postulando, 6.
— 2, 11 De erroribus advocatorum.
— 2, 12 De . . . procuratoribus.
— 6, 10 De primicerio et notariis.

— 8, 1 De numerariis, ac-tuariis, etc.
— 8, 2 De tabulariis.
— 8, 10 De concussionibus advocatorum.
— 8, 7 De diversis officiis, 17.
— 9, 9 De mulieribus quae se servis propriis junixerunt.
— 10, 15 De advocatis fisci.
— 11, 30 De appellationalibus, etc.
— 13, 10 De censu.
— 13, 11 De censitoribus.

Nov. THEOD. 10 De . . . perpetuanda advocatione.

Nov. VALENTINIAN. 2 De postulando.
— 15 De siliquarum exactionibus.
— 32 De . . . advocatis, etc.

FRAG. VATICAN. 317-41 De . . . procuratoribus.

(b) **Justinian:**

INST. 1, 11 De adoptionibus, § 3.
— 3, 23 De emptione, etc., pr.

— 4, 10 De his per quos agere, etc.

DIG. 1, 16 De officio proconsulis, etc. 9, § 5.
— 2, 4 De in jus vocando, 22, § 1.
— 3, 1 De postulando.
— 3, 2 De his qui notantur infamia.

(§1019) —— 3, 3 *De procuratoribus, etc.*
 —— 3, 4 . . . *Universitatis nomine vel contra eam agatur.*
 —— 17, 1 *Mandati vel contra, 7.*
 —— 19, 2 *Locati, etc., 38, §1.*
 —— 26, 10 *De suspectis tutor., etc., 3, §15.*
 —— 48, 19 *De poenis, 9, §§ 4-7.*
 —— 50, 4 *De muneribus, etc., 18, § 17.*
 —— 50, 13 *De . . . extraordinariis cognitionibus, etc., 1, §§ 10 and 12.*
CODE, 1, 2 *De . . . ecclesiis, etc., 14, § 6 (3).*
 —— 1, 4 *De episcopali audentia, etc.*
 —— 2, 7 *De advocatis diversorum judiciorum.*
 —— 2, 8 (9) *De advocatis fisci.*
 —— 2, 9 (10) *De errore advocatorum vel libellos seu preces concipientum.*
 —— 2, 10 (11) *Ut quae desunt advocationi partum judex suppletat.*
 —— 2, 12 (13) *De procuratoribus.*
 —— 4, 21 *De fide instrumentorum, etc., 17.*
 —— 5, 44 *De in item dando tutor. vel curator.*
 —— 6, 22 *Qui facere testamentum, etc., 8.*
 —— 7, 17 *De adassertione tolenda.*
 —— 7, 62 *De appellationibus, 4.*
 —— 10, 71 (69) *De tabulariis, etc.*
 —— 11, 54 (53) *Ut nemo ad suum patrocinium, etc., 1.*
 —— 11, 58 *De censibus, etc.*
 —— 12, 7 *De primicerio et secundocerio et notariis.*
 —— 12, 19 *De proximis sacerdotum scriniorum, etc., 1.*
 —— 12, 49 (50) *De numerariis, actuariis . . . exceptoribus sedis excelsae ceterorum judicum, etc.*
 —— 12, 61 (62) *De lucris advocatorum et concus-sionibus, etc.*
Nov. 44 *De tabellionibus, etc.*

(c) **Post-Justinian:**

THEOPHILUS, i, 11, § 3; iii, 23, pr.; iv, 10.

BAS. 6, 25 *De . . . notariis.*
 —— 6, 35 *De tabulariis et actuariis . . . et exceptori-bus . . . excelsae sedis et reliquorum judicum, etc.*
 —— 8, 1 *De postulando, 26.*
 —— 8, 2 *De procuratoribus, etc.*
 —— 21, 3 *De . . . infamia, etc.*
 —— 22, 2 *De tabellionibus, etc.*
 —— 54, 8 *De tabulariis, etc.*

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E. See also supra § 1018, infra § 1021; supra vol. ii, §§ 874-907.

§ 1020 Public law in general: references.

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(b) Justinian:

CODE, 11, 30 (29) *De jure rei publicae*.

(c) Post-Justinian:

BAS. 54, 28 *De jure reipublicae*.

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Mag. and Rev., p. 1.

III. See also *infra* §§ 1021–26; *supra* vol. ii, § 873; vol. i, §§ 30–33, 35, 55, 120, 173.

Constitutional and administrative law (including the Roman § 1021 civil service); references.

I. Texts of Roman law:—

For English translations, see
supra §§ 945, 946, 948, 951,
952, 955.

(a) **Ante-Justinian:**

COD. THEOD. i, titles 5-6,
8-10, 12-13, 15-22, 28-9,
33; vi, 2-10, 12, 15-20, 23-
9, 32, 37-8; viii, 1-5, 7-9,
11, 15; xii, 12; xiv, 12, 23;
xv. (The principal sub-
jects of these titles are the
praetorian prefect, praefec-
tus urbi, praefectus vigilum,
magister militum, magister
officiorum, vicar, rector,
consul, proconsul, comes,
legatus, praeses, quaestor,
rationalis, assessor, defensor
civitatis, praetor, senate,
knights, patricius, decurio,
agentes. notary.)

Nov. MARJORIAN. 3 De
defensor. civitat.

NOV. VALENTINIAN. 11-12^o
22, 30.

(b) **Justinian:**

DIG. i, titles 9-19, 21-2,
1, 5-7. (The principal
subjects of these titles are
the senate, consul, praetor-
ian prefect, praefectus
urbi, praefectus vigilum,
praetor, quaestor, procon-
sul, praefectus Augustalis,
praeses, procurator Cae-
saris, legatus, assessor.)

(§1021) fectus Augustalis, vicar, rector, consul, proconsul, legatus, praetor, quaestor, magister officiorum, magister militum, magister scri- niorum, comes, defensor civitatis, assessor, advocate, notary, apparitor, agentes, decani).
 Nov. 10, 13, 15, 17, 20, 24–31, 35, 41, 44, 62, 69, 80, 95–6, 102, 104–5, 114, 134, 145, 149, 151–2, 161, 168. (The principal subjects of these titles are the emperor, senate, consul, proconsul, praetor, praetorian prefect, comes, dux, knights, praeses, moderator, defensor civitatis, administrator, executor, notary.)

EDICTA (Appendix to Novels), 4, 8, 12–13.

(c) Post-Justinian:

EPANAGOGA, titles 2, 4–7.
 BAS. vi, titles 1–25, 27–9, 31, 33–5; vii, 1, 4; xxii, 2; liv. 8–9, 28–9, 23; lvi, 19. (The principal subjects of these titles are the praetorian prefect, praefectus urbi, praefectus vigilum, consul, proconsul, praetor, comes, dux, vicar, quaestor, praeses, moderator, defensor civitatis, procurator, rationalis, assessor, knights, legatus, executor, notary, decani.)

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WILLEMS, *Droit public romain*⁷, Louvain, 1910.

III. *See also* supra §§ 949, 956, 1018–20; *infra* §§ 1022–5; *supra* vol. ii, §§ 441–4, 873; vol. i, §§ 49, 55, 120, 173.

Municipal corporations: references.

§ 1022

I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) Ante-Justinian:

LEX Antonia de Ternisibus, 70–72 B.C. (transl. by Hardy, *Six Roman laws*, pp. 94–101, Oxford, 1911).

LEX Coloniae Genetivae Ju-
liae sive Ursonensis (Bruns, *Fontes juris*⁶, p. 123), Leip-
zig, 1893.

LEX Julia municipalis (transl.
by Hardy, *Id.*, pp. 149–64).
— (Bruns, *Fontes juris*⁶,
pp. 136–64).

LEX municipii Tarentini,
(transl. by Hardy, *Id.*
pp. 106–9).

LEX Rubria de Gallia Cis-
alpina (transl. by Hardy,
Id., pp. 125–35).

LEX municipalis Salpen-
sana (Bruns, *Fontes juris*⁶,
pp. 142–7).

COD. THEOD. 1, 29 *De de-
fensor. civitat.*
— 1, 30 *De curator. civitat.*

— 1, 31 *De administrat-
intra urbem.*

— 5, 2 *De decurion.*

— 6, 23 *De decurion., etc.*

— 12, 1 *De decurion.*

— 12, 2 *De praebendo sala-
rio.*

— 12, 3 *De praediis et
mancipiis curialium, etc.*

— 12, 4 *De imponenda
lucrativis, etc.*

— 12, 5 *Quemadmodum
munera civilia indicantur.*

— 12, 13 *De auro coro-
nario.*

— 12, 14 *De irenarchis.*

— 12, 18 *Si curialis relecta
civitate rus habitare ma-
luerit.*

— 12, 19 *De his qui con-
dicionem propriam relique-
runt.*

— 14, 1 *De decuriis urbis
Romae.*

— 14, 25 *De frumento
Karthaginiensi.*

— 14, 26 *De frumento
Alexandrino.*

— 14, 27 *De Alexandrinae
plebis primatibus.*

(§ 1022) —— 15, 1 De operibus publicis.
 —— 15, 2 De aqueductu.
 —— 15, 5 De spectaculis.
 Nov. LEO and SEVERUS, 2.
 Nov. MARCIAN. 3 De praediis civitatum omnium.
 Nov. MARJORIAN. 3 De defensor. civitat.
 —— 7 De curialibus, etc.
 Nov. THEOD. 9 Ne curialis, etc.
 —— 10 De postulando, etc.
 —— 16 Ne curialis, etc.
 —— 23 De locis rei publicae . . . possessis civitatibus, etc.
 Nov. VALENTINIAN. 3 De succession. curialium, etc.
 —— 15 De siliquarum exaction.
 —— 20 De corporatis urbis Romae, etc.
 —— 32 De confirm. his quae administratibus . . . distracta, etc.

(b) **Justinian:**

DIG. 3, 4 Quod . . . universitatis, etc.
 —— 47, 22 De collegiis et corporibus.
 —— 50, 1 Ad municipalem et de incolis.
 —— 50, 2 De decurion.
 —— 50, 3 De albo scribendo.
 —— 50, 4 De muneribus, etc.
 —— 50, 5 De vacatione et excusatione munerum.

—— 50, 6 De jure immunitatis.
 —— 50, 8 De administratione rerum ad civitates pertinentium.
 —— 50, 9 De decretis ob ordine faciendis.
 —— 50, 10 De operibus publicis.
 —— 50, 11 De nundinis.
 —— 50, 12 De pollicitationibus.
 CODE, 1, 55 De defensor. civitat.
 —— 1, 56 De magistratibus municipal.
 —— 3, 23 Ubi quis de curiali vel cohortali, etc.
 —— 6, 62 De hereditatibus decurion., etc.
 —— 10, 22 De apochis publicis et . . . curial.
 —— 10, 32 (31) De decurion.
 —— 10, 33 (32) Si . . . ad decurionatum, etc.
 —— 10, 34 (33) De praediis curial., etc.
 —— 10, 35 (34) Quando . . . decurion., etc.
 —— 10, 36 (35) De imponenda lucrativis, etc.
 —— 10, 38 (37) Si curialis relicta civitate rus habitare maluerit.
 —— 10, 39 (38) De municipibus et originariis.
 —— 10, 41 (40) De . . . muneribus, etc.

- 10, 42 (41) *De muneribus, etc.*
- 10, 43 (42) *Quemadmodum civilium munera indicantur.*
- 10, 44 (43) *De . . . munera.*
- 10, 45 (44) *De his qui a principe vacationem acciperunt.*
- 10, 46 (45) *De vacatione muneris.*
- 10, 47 (46) *De decretis decurion., etc.*
- 10, 48 (47) *De excusationibus munerum.*
- 10, 49 (48) *De . . . muneribus nemini liceat se excusare.*
- 10, 50 (49) *Qui aetate se excusant.*
- 10, 51 (50) *Qui morbo.*
- 10, 52 (51) *De his qui . . . excusationem meruerunt.*
- 10, 53 (52) *De professорibus, etc.*
- 10, 54 (53) *De athletis.*
- 10, 55 (54) *De his qui non . . . stipendiis, etc.*
- 10, 58 (56) *De libertinis.*
- 10, 62 (60) *De filiis familias, etc.*
- 10, 63 (61) *De periculo successor. parentis.*
- 10, 64 (62) *De mulieribus . . . munera, etc.*
- 10, 66 (64) *De excusa-^(§ 1022) tionibus artificum.*
- 10, 67 (65)–73 (71) *are minor titles on munera.*
- 10, 77 (75) *De irenarchis.*
- 11, 14 (13) *De decuriis urbis Romae.*
- 11, 15 (14) *De privilegiis corporatorum urbis Romae.*
- 11, 18 (17) *De collegiatis, etc.*
- 11, 21 (20) *De privilegiis urbis Constantinopolitanae.*
- 11, 22 (21) *De metropoli Beryto.*
- 11, 29 (28) *De Alexandriae primatibus.*
- 11, 32 (31) *De vendendis rebus civitatis.*
- 11, 33 (32) *De debitoribus civitatum.*
- 11, 36 (35) *Quo quisque que ordine conveniatur.*
- 11, 40 (39) *De solutionibus . . . debitorum civitatis.*
- 11, 43 (42) *De aqueductu.*
- 11, 57 (56) *Ut nullus ex vicanis pro alienis debitibus vicanorum teneatur.*
- 11, 70 (69) *De diversis praediis urbanis, etc.*
- 11, 71 (70) *De locatione praediorum civilium, etc.*
- 12, 16 *De decurion.*
- 12, 62 (63) *De primipilo.*

(\$1022) Nov. 15 De defensor. civitat.
 — 38 De naturalibus in
 curiam deputandis vel . . .
 facultate curialium, etc.
 — 45 Ut haeretici curiales,
 etc.
 — 70 Ut ordinariae prae-
 fecturae urbanae . . . a
 curiali fortuna.
 — 87 De mortis causa do-
 natione a curial. facta.
 — 101 De donation. a cur-
 ial. factis, etc.
 — 151 Ne curialis, etc.
 — 160 Exemplum sacrae
 pragmaticae sanctionis.
EDICTA (Appendix to Nov.),
 10 De cohortalibus.

(c) **Post-Justinian:**

BAS. 6, 18 De defensoribus.
 — 40, 1 De bonorum pos-
 session., etc.
 — 48, 3 De manumission.
 servorum ad universitatem.
 pertinentium, etc.
 — 54, 1 De municipibus et
 muneribus.
 — 54, 10 De administra-
 tione rerum ad civitatem
 pertinentium.
 — 54, 19 De privilegiis
 corporum urbis Romae.
 — 54, 22 De magistris li-
 berorum in urbe Roma et
 Constantinopoli.
 — 54, 23 De privilegiis
 Constantinopolis et metro-
 polis Beryti.

— 54, 30 De vendendis
 rebus civitatis.
 — 54, 31 De debtoribus
 civitatis.
 — 54, 36 De solutionibus
 . . . debtorum civitatis.
 — 55, 13 De diversis prae-
 diis urbanis et rusticis tem-
 plorum et civitatum et omni
 reditu civilu.
 — 58, 12 De operibus pub-
 licis et . . . reditibus civi-
 tatum.
 — 58, 19 De magnis aquae-
 ductis.
 — 58, 22 De cloacis.

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 21.

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— *Droit public romain*⁷, pp. 349–75, 508–41, 585–93, 652.

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III. See also *supra* §§ 994, 1021; *infra* §§ 1024–6; vol. ii, §§ 538, 908–12.

Criminal law: references.

§ 1023

I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) *Ante-Justinian:*

XII TABLES, viii, 9–10, 12–17, 20, 24–6; ix, 2–6.

(§1023) **LEX Acilia repetundarum** (transl. by Hardy, *Six Roman laws*, pp.10-34, Oxford, 1911).

PAULUS, *Sent.* 1, 5 *De calumniatoribus*.

- 1, 6b *De reis institutis.*
- 1, 12 *De judiciis omnibus.*
- 2, 26 *De adulteriis.*
- 2, 31 *De furtis.*
- 4, 7 *De lege Cornelia.*
- 5, 3 *De his quae per turbam fiunt.*
- 5, 13 *De delatoribus.*
- 5, 14 *De quaestionibus, etc.*
- 5, 16 *De quaestionibus servorum.*
- 5, 17 *De abolitionibus.*
- 5, 18 *De abactoribus.*
- 5, 19 *De sacrilegis.*
- 5, 20 *De incendiariis.*
- 5, 21 *De vaticinatoribus et mathematicis.*
- 5, 21a (*offenses against the coinage; against desertion.*)
- 5, 22 *De seditiosis.*
- 5, 23 *Ad legem Corneliam de sicariis et beneficis.*
- 5, 24 *Ad legem Pompeiam de parricidis.*
- 5, 25 *Ad legem Corneliam testamentariam.*
- 5, 26 *Ad legem Julianam de vi publica et privata.*
- 5, 27 *Ad legem Julianam peculatus.*

— 5, 28 *Ad legem Julianam repetundarum.*

— 5, 29 *Ad legem Julianam majestatis.*

— 5, 30a *Ad legem Julianam ambitus.*

— 5, 31 *De peonis militum.*

COD. GREGORIAN. 14 *Ad legem Corneliam de sicariis et beneficis.*

— 14 *Ad legem Julianam de adulteriis et de stupro.*

COD. HERMOGENIAN. *Ad legem Julianam de adulteriis.*

— *De calumniatoribus, etc.*

COD. THEOD. 1, 12 *De officio proconsuli et legati.*

— 2, 29 *Si . . . de suffragiis.*

— 6, 27 *De agentibus in rebus.*

— 6, 28 *De principibus agentum in rebus.*

— 6, 29 *De curiosis.*

— 8, 10 *De concussionibus advocatorum, etc.*

— 9, 1 *De accusationibus et inscriptionibus.*

— 9, 2 *De exhibendis vel transmittendis reis.*

— 9, 3 *De custodia reorum.*

— 9, 4 *Si quis imperatori maledixerit.*

— 9, 5 *Ad legem Julianam majestatis.*

— 9, 6 *Ne praeter crimen majestatis, etc.*

— 9, 7 *Ad legem Julianam de adulteriis.*

- 9, 8 Si quis eam, cuius tutor fuerit, corruperit.
- 9, 9 De mulieribus, quae se servis propriis junxerunt.
- 9, 10 Ad legem Julianam de vi publica et privata.
- 9, 11 De privati carceris custodia.
- 9, 12 De emendatione servorum.
- 9, 13 De emendatione propinquorum.
- 9, 14 Ad legem Corneliam de sicariis.
- 9, 15 De parricidis.
- 9, 16 De maleficis et mathematicis, etc.
- 9, 17 De sepulchroviolato.
- 9, 18 Ad legem Fabiam.
- 9, 19 Ad legem Corneliam de falso.
- 9, 20 Victum civiliter agere criminaliter posse.
- 9, 21 De falsa moneta.
- 9, 22 Si quis solidi circulum exteriorem inciderit vel adulteratum in vendendo subjecerit.
- 9, 23 Si quis pecunias conflaverit, etc.
- 9, 24 De raptu virginum vel viduarum.
- 9, 25 De raptu vel matrimonio sanctrimonialium virginum vel viduarum.
- 9, 26 Ad legem Julianam de ambitu.
- 9, 27 Ad legem Julianam repetundarum.
- 9, 28 De crimine pecu- (§ 1023)
latus.
- 9, 29 De his, qui latrones vel aliis criminibus reos occultaverint.
- 9, 30 Quibus equorum usus concessus est, aut de-negatus.
- 9, 31 Ne pastoribus dentur filii nutriendi.
- 9, 32 De Nili aggeribus non corrumpendis.
- 9, 33 De his, qui plebem audent contra publicam col-ligere disciplinam.
- 9, 34 De famosis libellis.
- 9, 35 De quaestionibus.
- 9, 36 Ut intra annum criminalis quaestio termine-tur.
- 9, 37 De abolitioni-bus.
- 9, 38 De indulgentiis criminum.
- 9, 39 De calumniatoribus.
- 9, 40 De poenis.
- 9, 41 Ne sine jussu prin-cipis certis judicibus liceat confiscare.
- 9, 42 De bonis pro-scribitorum seu damna-torum.
- 9, 43 De sententiam pas-sis et restitutis et liberis eorum.
- 9, 44 De his qui ad statuas configiunt.
- 9, 45 De his, qui ad ecclesias configiunt.

(§1023) —— 10, 11 De his qui se deferunt.
 —— 11, 26 De discussoribus.
 —— 11, 30 De appellationibus, etc.
 —— 12, 9 De his, quae ex publica conlatione inlata sunt, non usurpandis.
 —— 15, 1 De operibus publicis.
 —— 15, 8 De lenonibus.
 —— 15, 14 De infirmandis quae sub tyrannis aut barbaris gesta sunt.
 —— 15, 15 Quibus armorum usus interdictus est.

COLLATIO MOSAIC. ET ROM.

1, 1-4 De sicariis et homicidis casu vel voluntate.
 —— 1, 5-13 De casual. homicidis.
 —— 2 De atroci injuria.
 —— 4 De adulteriis.
 —— 5 De stupratoribus.
 —— 6 De incestis nuptiis.
 —— 7 De furibus et de poena eorum.
 —— 8 De falso testimonio.
 —— 11 De abactoribus.
 —— 12 De incendiariis.
 —— 14 De plagiariis.
 —— 15 De mathematicis, maleficiis et Manichaeis.

Nov. MARJORIAN. 5 De bonis caducis sive proscriptorum.
 —— 9 De adulteriis.

Nov. THEOD. 18 De lenonibus.

Nov. VALENTIAN. 9 De redito jure armorum.

—— 16 De pretio solidi et ne quis solidum integrum recuset.
 —— 19 De homicidis casu factis necne.
 —— 23 De sepulchro. violatoribus.
 —— 33 De parentibus qui filios distraxerunt, et ne ingenui barbaris venunderunt, etc.

(b) **Justinian:**

INST. 4, 1 De obligation. . . .
 ex delicto, etc., §§ 1-19.
 —— 4, 4 De injuriis, § 10.
 —— 4, 18 De publicis iudiciis.

DIG. 3, 6 De calumniatoribus.
 —— 11, 5 De aleatoribus.
 —— 43, 23 De cloacis.
 —— 47, 2 De furtis.
 —— 47, 4 Si is, qui testamento liber esse jussus erit post mortem domini ante aditam hereditatem subripuisse aut corripuisse, etc.
 —— 47, 5 Furti adversus nautas, caupones, stabularios.
 —— 47, 7 Arborum furtim caesarum.
 —— 47, 8 Vi bonorum rapitorum et de turba.
 —— 47, 9 De incendio ruina naufragio rate nave expugnata.
 —— 47, 10 De injuriis et famosis libellis.

- 47, 11 De extraordinariis criminibus.
- 47, 12 De sepulchro violato.
- 47, 13 De concussione.
- 47, 14 De abigeis.
- 47, 15 De praevericatione.
- 47, 16 De receptatoribus.
- 47, 17 De furibus ballneariis.
- 47, 18 De effractoribus et expilatoribus.
- 47, 19 Expilatae hereditatis.
- 47, 20 Stellionatus.
- 47, 21 De termino moto.
- 47, 23 De popularibus actionibus.
- 48, 1 De publicis iudiciis.
- 48, 2 De accusationibus et inscriptionibus.
- 48, 3 De custodia ex exhibitione reorum.
- 48, 4 Ad legem Juliam majestatis.
- 48, 5 Ad legem Juliam de adulteriis, etc.
- 48, 6 Ad legem Juliam de vi publica.
- 48, 7 Ad legem Juliam de vi privata.
- 48, 8 Ad legem Corneliam de sicariis et beneficis.
- 48, 9 De lege Pompeia de parricidiis.
- 48, 10 De lege Cornelia defalsis et de SC. Liboniano.
- 48, 11 De lege Julia (§ 1023) repetundarum.
- 48, 12 De lege Julia de annonae.
- 48, 13 Ad legem Juliam peculatus et de sacrilegis, etc.
- 48, 14 De lege Julia ambitus.
- 48, 15 De lege Fabia de plagiariis.
- 48, 16 Ad. SC. Turpillianum et de abolitionibus criminum.
- 48, 17 De requirendis vel abstinendis damnandis.
- 48, 18 De quaestionibus.
- 48, 19 De poenis.
- 48, 20 De bonis damnatorum.
- 48, 21 De bonis eorum qui ante sententiam vel mortem sibi conciverunt vel accusatorem corrumperunt.
- 48, 22 De interdictis et relegatis et deportatis.
- 48, 23 De sententiam passis et restitutis.
- 48, 24 De cadaveribus punitorum.
- 49, 13 Si pendente appellatione mors intervenit.
- 50, 10 De operibus publicis.

CODE 1, 19 De precibus imperatori offerendis et de quibus rebus supplicare licet vel non.

(§1023) CODE, 1, 21 Ut lite pendente vel post provocationem aut definitivam sententiam nulli liceat imperatori supplicare.

— 1, 22 Si contra jus . . . aliquid postulatum vel impetratum.

— 1, 24 De statuis et imaginibus.

— 1, 25 De his qui ad statuas confugiunt.

— 1, 42 De quadrimenstruis, etc.

— 1, 54 De modo multarum quae ab judicibus infliguntur.

— 2, 1 De judiciis.

— 2, 58 (59) De jurejuringando propter calumniam dando.

— 3, 7 Ut nemo invitatus agere vel accusare cogatur.

— 3, 15 Ubi de criminibus agi oportet.

— 3, 24 Ubi senatores vel clarissimi civiliter vel criminaliter convenientur.

— 3, 43 De aleae lusu et aleatoribus.

— 4, 3 De suffragio.

— 4, 42 De eunuchis.

— 4, 59 De monopoliis, etc.

— 7, 49 De poena judicis qui male judicavit, vel ejus qui judicem vel adversarium corrumpere curavit.

— 8, 11 (12) De operibus publicis.

— 8, 51 (52) De infantibus expositis . . . et de his qui sanguinolentos emptos nutritiendos acceperunt.

— 9, 1 Qui accusare non possunt.

— 9, 2 De accusationibus et inscriptionibus.

— 9, 3 De exhibendis vel transmittendis reis.

— 9, 4 De custodia reorum.

— 9, 5 De privatis carceribus inhibendis.

— 9, 6 Si reus vel accusator mortuus fuerit.

— 9, 7 Si quis imperatori maledixerit.

— 9, 8 Ad legem Julianam majestatis.

— 9, 9 Ad legem Julianam de adulteriis et de stupro.

— 9, 10 Si quis eam cuius tutor fuerit corruperit.

— 9, 11 De mulieribus quae servis propriis se junxerunt.

— 9, 11 Ad legem Julianam de vi publica seu privata.

— 9, 13 De raptu virginum seu viduarum nec non sanctiomonalium.

— 9, 14 De emendatione servorum.

— 9, 15 De emendatione propinquorum.

— 9, 16 Ad legem Corneliam de sicariis.

— 9, 17 De his qui parentes vel liberos occiderunt.

- 9, 18 De maleficiis et mathematicis, etc.
- 9, 19 De sepulchro violato.
- 9, 20 Ad legem Fabiam.
- 9, 21 Ad legem Viselliam.
- 9, 22 Ad legem Corneliam de falsis.
- 9, 23 De his qui sibi abscribant in testamento.
- 9, 24 De falsa moneta.
- 9, 25 De mutatione nominis.
- 9, 26 Ad legem Julianam de ambitu.
- 9, 27 Ad legem Julianam repetundarum.
- 9, 28 De crimine peculatus.
- 9, 29 De crimine sacrilegii.
- 9, 30 De seditiosis et his qui plebem audent contra publicam quietum colligere.
- 9, 31 Quando civilis actio criminali praejudicet et an utraque ab eodem exerceri potest.
- 9, 32 De crimine expiatae hereditatis.
- 9, 33 Vi bonorum rapitorum.
- 9, 34 De crimine stellionatus.
- 9, 35 De injuriis.
- 9, 36 De famosis libellis.
- 9, 37 De abigeis.
- 9, 38 De Nili aggeribus non rumpendis.
- 9, 39 De his qui latrones (§ 1023) vel in aliis criminibus reos occultaverint.
- 9, 40 De requirendis.
- 9, 41 De quaestionibus.
- 9, 42 De abolitionibus.
- 9, 43 De generali abolutione.
- 9, 44 Ut intra certum tempus criminalis quaestio terminetur.
- 9, 45 Ad. SC. Turpilianum.
- 9, 46 De calumniatoribus.
- 9, 47 De poenis.
- 9, 48 Ne sine jussu principis certis judicibus liceat confiscare.
- 9, 49 De bonis proscriptorum, seu damnatorum.
- 9, 50 De bonis mortem sibi conscientium.
- 9, 51 De sententiam passis et restitutis.
- 10, 6 De his qui ex publicis rationibus mutuam pecuniam acceperunt.
- 10, 10 De petitionibus et ultro datis et delationibus.
- 10, 11 De delatoribus.
- 10, 12 De petitionibus bonorum sublatis.
- 10, 13 De his qui se deferunt.
- 10, 59 (57) De infamibus.
- 10, 60 (58) De reis, etc.
- 11, 41 (40) De spectaculis et scaenicis et lenonibus.

(§ 1023) CODE, 11, 50 (49) In quibus causis coloni . . . accusare possunt.

— 12, 20 De agentibus in rebus.

— 12, 21 (22) De principi- bus agentum in rebus.

— 12, 22 (23) De curiosis. Nov. 8 Ut judices sine quo- quo suffragio fiant.

— 12 De incestis et nefariis nuptiis.

— 14 De lenonibus.

— 49 De . . . jurejurando calumniae.

— 69 Ut omnes oboediant judicibus provinciarum et in criminalibus, etc.

— 71 Ut ab illustribus et qui super eam dignitatem sunt . . . criminaliter per procuratorem dicatur, etc.

— 134 Ut nulli judicum liceat loci servatorem, etc.

— 139 Remissio poenae il- licitarum nuptiarum.

— 141 Edictum Justiniani ad Constantinopol. de luxuriantibus contra na- turam.

— 142 De iis qui eunuchos faciunt.

— 143 De raptis mulieri- bus et quae raptoribus nu- bunt.

— 150 De raptis mulieribus et quae raptoribus nubunt.

— 152 Ne sacrae formae quae de publicis procedunt aliter valeant nisi si . . . insinuatae, etc.

— 153 De infantibus ex- positis.

(c) Post-Justinian:

THEOPHILUS, 4, 1 De obliga- tion. . . ex delicto, etc., §§ 1-19.

— 4, 4 De injuriis, § 10.

— 4, 18 De publicis judiciis.

ECLOGA, 17 De poenis in criminal. causis.

PROCHIRON, 39 De poenis.

EPANAGOGA, 40 De poenis.

BAS. 6, 29 De agentibus in rebus.

— 7, 14 Qui . . . de jure- jurando propter calumniam, etc.

— 7, 19 . . . Ut nemo in- vitus agere vel accusare cogatur.

— 21, 2 De . . . infamia.

— 21, 3 De . . . infamia, etc.

— 28, 6 De incestis nuptiis.

— 31, 9 Si mulier ventris . . . calumniae causa, etc.

— 43, 7 De multis, quae ex condemnatione judicum veniunt.

— 56, 7 De delationibus.

— 56, 13 Ut nemo ad suum patrocinium suscipiat rus- ticanos vel vicos eorum.

— 58, 12 De operibus pub- licis, etc.

- 59, 2 De mortuo inferendo et sepulchro aedificando.
- 60, 1 De . . . poenis, etc.
- 60, 8 De aleatoribus.
- 60, 12 De furto.
- 60, 13 Si quis in testamento liber esse jubeatur et post mortem domini ante aditionem hereditatis subripuisse aut corripisse, etc.
- 60, 14 De furto adv. caupones et stabularios.
- 60, 16 De arboribus palim vel furtim caesis.
- 60, 17 De bonis raptis, et de turba, et de vi armata.
- 60, 21 De injuriis et famosis libellis.
- 60, 22 De extraordinariis criminibus.
- 60, 23 De violatione sepulcrorum, etc.
- 60, 24 De concussione.
- 60, 25 De abigeis.
- 60, 26 De accusatoribus sive praevericatoribus.
- 60, 27 De receptatoribus.
- 60, 28 De iis, qui carcere effugiunt, et de expilatione.
- 60, 29 De expilata hereditate.
- 60, 30 Actio in stelliones.
- 60, 31 De termino moto.
- 60, 32 De . . . populariibus actionibus.
- 60, 33 De publicis iudiciis.
- 60, 34 De accusationibus (§ 1023) et inscriptionibus.
- 60, 35 De custodia . . . reorum.
- 60, 36 Lex Julia . . . majestatis.
- 60, 37 Lex Julia de adulteriis et de stupro, etc.
- 60, 38 Ut ne lenones ullo loco Romanae reipublicae.
- 60, 39 Lex Cornelia de sicariis et beneficis et mathematicis, etc.
- 60, 40 Lex Pompeia de parricidis.
- 60, 41 Lex Cornelia de falsis et SC. Libonianum.
- 60, 43 De lege Julia . . . adversus magistratus vel judices vel assessores, etc.
- 60, 44 De lege Julia de annonae.
- 60, 45 Lex Julia contra peculatoribus, et de sacrilegis etc.
- 60, 46 Lex Julia in ambitiosos.
- 60, 48 Lex Fabia de plagiariis.
- 60, 49 De requisitione absentium condemnatorum.
- 60, 50 De quaestione.
- 60, 51 De poenis.
- 60, 52 Bonis damnatorum.
- 60, 53 Bonis eorum qui ante sententiam vel mortem sibi consciverunt, etc.

(§1023) BAS. 60, 54 De interdictis et
relegatis et deportatis.
— 60, 56 Si reus vel ac-
cusator mortuus fuerit.
— 60, 57 Si quis eam, cuius
tutor fuerit, corruperit.
— 60, 60 De adulteratori-
bus monetae et mutatione
nominis.
— 60, 61 De seditiosis et
iis qui plebem contra rem-
publicam audent colligere.
— 60, 62 Quando civilis vel
criminalis condemnatio et
utrum utraque an una tan-
tum ab eodem exerceri pos-
sit.
— 60, 63 De famosis libel-
lis.
— 60, 64 De abolitionibus
et de generali abolitione.
— 60, 65 Ut intra statutum
tempus quaestio finiatur.
— 60, 66 De accusatore
desistente.
— 60, 67 Ne sine jussu
principis non statutis judi-
cibus liceat confiscare.
— 60, 68 De sententiis pas-
sis et restitutis.
— 60, 69 De reliquis puni-
torum.

HEXABIBLOS, Condemnatio
adv. judices proposita a
Leone et Alejandro, etc.
(second section of preface).
— 1, 4 De judiciali sen-
tentia et re judicata.
— 1, 5 De delationibus.

— 1, 13 De muleribus (in-
cludes "SC. Turpilianum",
"tergiversatio").
— 1, 16 De militibus.
— 6, 1 De damno.
— 6, 2 De adulteriis.
— 6, 3 De scortatoribus et
virginum corruptoribus.
— 6, 4 De his qui suo se
sanguine miscent.
— 6, 5 De furibus, abigeis,
sepulcrorum effosoribus et
sacrilegis.
— 6, 6 De homicidis et
latronibus.
— 6, 7 De mulierum rap-
toribus.
— 6, 9 De calumniatoribus
et famosi libelli inventori-
bus.
— 6, 10 De beneficis, male-
ficis et divinatoribus.
— 6, 14 De . . . poenis.
— 6, 15 De . . . infamia,
etc.

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2), De furto.
(leges agrariae), De in-
cendio.

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MARSHALL, Punishment of crime under the Roman Empire, 23 Law Mag. and Rev., p. 12.

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(b) **Modern Codes:**
See the Penal Codes of various countries.

III. See also supra §§ 1016 (injuria, furtum, rapina), 1018 (especially appeals), 1021, 1022; vol. ii, §§ 913-38; vol. i, §§ 152, 174.

§ 1024 Financial law (including the treasury département or fiscus of the State, revenues and expenditures of the State, coinage, taxation, public and Imperial domains, mines, public games, trade, commerce, annonae, education): references.

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SEE also *supra* §§ 1019, 1021; vol. ii, § 939.

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B. Imperial treasury or *fiscus*, *indiction*, *superindiction*, *taxation*, and *revenues*.

I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) *Ante-Justinian*:

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ULPIAN, *Reg.* 17 *De caducis*.

COD. HERMOGENIAN. *De jure fisci*.

COD. THEOD. 1, 14 *De officio praefecti Augustalis*.

— 2, 6 *De temporum cursu*, etc.

— 4, 13 *De vectigalibus*, etc.

— 4, 15 *De quinquennii praescriptione*.

— 5, 11 (*De omni agro deserto*).

— 5, 14 (*De diversis praediis urbanis et rusticis et de omni reditu civili*).

— 5, 15 (*De omni deserto*, etc.).

— 5, 16 (*De agricolis et (§ 1024) mancipiis dominicis vel fiscalibus*, etc.).

— 6, 23 *De decurionibus*, etc.

— 6, 30 *De palatinis sacrarum largitionum*, etc.

— 8, 15 *De his, quae administrantibus vel publicum officium gerentibus distracta sunt vel donata*.

— 9, 42 *De bonis proscriptorum seu damnatorum*.

— 10, 1 *De jure fisci*.

— 10, 2 *De locatione fundorum . . . rei publicae*, etc.

— 10, 8 *De bonis vacantibus*.

— 10, 9 *De incorporatione*.

— 10, 10 *De . . . delatoribus*.

— 10, 11 *De his qui se deferunt*.

— 10, 12 *Si vagum petatur mancipium*.

— 10, 13 *De petitoribus*, etc.

— 10, 14 *Si petitione socius sine herede defecerit*.

— 10, 15 *De advocatis fisci*.

— 10, 16 *De fisci debitoribus*.

— 10, 17 *De fide et jure hastae*.

— 10, 18 *De thesauris*.

— 10, 19 *De metallis et metallariis*.

(§1024) **COD. THEOD.** 10, 20 De muri-
legulis, etc.
— 10, 21 De vestibus,
etc.
— 10, 22 De fabricensi-
bus.
— 10, 23 De classicis.
— 11, 1 De ammonia et tri-
butis.
— 11, 2 Tributa in ipsis
speciebus inferri.
— 11, 3 Sine censu vel
reliquis fundum comparari
non posse.
— 11, 4 Ne conlatio per
logografos celebretur.
— 11, 5 De indictionibus.
— 11, 6 De superindictio.
— 11, 7 De exactionibus.
— 11, 8 De superexactioni-
bus.
— 11, titles 9-25 concern
minor features of taxation
and revenue.
— 11, 26 De discussoribus.
— 11, 27 De alimentis, quae
inopes parentes de publico
petere debent.
— 11, 28 De indulgentiis
debitorum.
— 12, 1 De decurion.
— 12, 2 De praebendo sal-
ario.
— 12, 6 De susceptoribus
... et arcariis.
— 12, 7 De ponderatoribus
et auri inlatione.
— 12, 8 De auri publici
prosecutoribus.

— 12, 10 Ne praefectianus
exactoris, etc.
— 12, 11 De curator. kalen-
darii, etc.
— 12, 16 De mancipibus.
— 13, 1 De lustrali con-
latione.
— 13, 2 De argenti pretio
quod thesauris infertur.
— 13, 10 De censu sive
adscriptione.
— 13, 11 De censoribus,
etc.
— 14, 22 De saccariis Port-
tus Romae.

NOV. MARCIAN. 2 De indul-
gentiis reliquorum.

NOV. MARJORIAN. 2 De indul-
gentiis reliquorum.

— 5 De bonis caducis sive
proscriptorum.

— 10 Neque senatorem ur-
bis Romae, etc.

NOV. THEOD. 17 De conpe-
tentibus.

— 26 De relevatis, etc.

NOV. VALENTINIAN. 1 De
indulgentiis reliquorum.

— 7 De palatinis.

— 13 De tributis fiscal.,
etc.

— 15 De siliquarum ex-
actionibus.

— 29 De naviculariis am-
nicis.

— 34 De praediis pistoriis,
etc.

— 36 De suariis, boariis et
pecuariis.

(b) **Justinian:**

DIG. 39, 4 De publicanis et vectigalibus, etc.
 —— 48, 20 De bonis damnatorum.
 —— 49, 14 De jure fisci.
 —— 50, 15 De censibus.
 CODE, 2 8 (9) De advocatis fisci.
 —— 2, 17 (18) Ne fiscus vel res publica procreationem, etc.
 —— 2, 36 (37) Si adversus fiscum.
 —— 3, 26 Ubi causae fiscales, etc.
 —— 4, 15 Quando fiscus, etc.
 —— 4, 61 De vectigalibus, etc.
 —— 4, 62 Vectigalia nova institui non posse.
 —— 6, 62 De hereditatibus decurion., etc.
 —— 7, 73 De privilegio fisci.
 —— 9, 49 De bonis proscriptorum seu damnatorum.
 —— 10, 1 De jure fisci.
 —— 10, 2 De convenientiis fisci debitoribus.
 —— 10, 3 De fide et jure hastae fisci, etc.
 —— 10, 4 De venditione rerum fiscalium, etc.
 —— 10, 5 Ne fiscus rem quam vendidit evincat.
 —— 10, 7 Poenis fiscalibus creditores p[re]ferri.

—— 10, 8 De fiscalibus usuris. (§ 1024)
 —— 10, 9 De sententiis adv. fiscum, etc.
 —— 10, 10 De bonis vacantibus et de incorporatione.
 —— 10, 11 De delatoribus.
 —— 10, 12 De petitionibus bonorum sublati.
 —— 10, 13 De his qui se deferunt.
 —— 10, 14 Si liberalitatis imperialis socius sine herede defecerit.
 —— 10, 15 De thesauris.
 —— 10, 16 De annona et tributis.
 —— 10, 17 De indictionibus.
 —— 10, 18 De superindicto.
 —— 10, 19 De exactionibus tributorum.
 —— 10, 20 De superexactionibus.
 —— 10, 21 De capiendis et distrahendis pignoribus tributorum causa.
 —— 10, 22 De epochis publicis, etc.
 —— 10, 23 De canone laganitionalium titulorum.
 —— 10, 24 Ne operae a collatoribus exigantur.
 —— 10, 25 De immunitate nemini concedenda.
 —— 10, 26 De conditis in publicis horreis.
 —— 10, 27 Ut nemini liceat in co-emptione specierum se excusare, etc.

(§1024) **CODE, 10, 28** De collatione donatorum vel relevatorum, etc.

— 10, 29 De collatione aeris.

— 10, 30 De discussoribus.

— 10, 36 (35) De imponenda lucrativis descriptione.

— 10, 37 (36) De praebendo salario.

— 10, 55 (54) De his qui non impletis stipendiis, etc.

— 10, 57 (56) De conductoribus vectigalium fisci.

— 10, 71 (69) De . . . censualibus.

— 10, 72 (70) De suspectoribus . . . et arcariis.

— 10, 73 (71) De ponderatoribus et auri illatione.

— 10, 74 (72) De auri publici prosecutor.

— 10, 75 (73) De his quae ex publica collatione illata sunt non usurpandis.

— 10, 76 (74) De auro coronario.

— 10, 78 (76) De argenti pretio quod thesauris infertur.

— 11, 1 De tollenda lustralis auri collatione.

— 11, 48 (47) De agricolis censitis, etc.

— 11, 49 (48) De capitulatione civium censibus eximenda.

— 11, 50 (49) In quibus causis coloni censi dominos accusare possunt.

— 11, 58 (57) De censibus, etc.

— 11, 59 (58) De omni agro deserto, etc.

— 11, 70 (69) De diversis praediis urbanis et rusticis . . . et omni reditu civile.

— 11, 71 (70) De locatione praediorum civilium vel fiscalium, etc.

— 11, 72 (71) De conductoribus et procuratoribus sive actoribus praediorum fiscalium, etc.

— 11, 73 (72) Quibus ad conductionem praediorum fiscalium accedere non licet.

— 11, 74 (73) De collatione fundorum fiscalium, etc.

— 12, 60 (61) De exsecutoribus, etc.

Nov. 128 De collatoribus, etc.

— 147 De reliquis publicis non exigendis et de discussione.

— 148 De indulgentia relickorum publicorum.

— 149 Ut praesides . . . quidquid iis tributorum publicorum, etc.

— 163 De relevatione tributorum.

— 166 De sterilium adjectione.

CONST. DISPERSAE (in second appendix to Nov.), 4 Ne quis metetur, etc.

EDICTA (in first appendix to Nov.), 2 Ne praesides in fiscalibus asyli jus dent.
— 10 De cohortalibus.

(c) Post-Justinian:

ECLOGA, 18 De partitione spoliorum.

BAS. 7, 11 Ut nemo privatus titulos praediis . . . vel alienis imponat, aut nomen regium suspendat; et ne fiscus, etc.

— 9, 9 De privilegio fisci, etc.

— 10, 19 Si adversus fiscum.

— 15, 3 De agro vectigali petendo.

— 55, 10 De collatione fundorum, etc.

— 56, 1 De publicanis et vectigalibus publicis.

— 56, 2 De jure fisci.

— 56, 3 De censibus, etc.

— 56, 4 De vectigalium exactione.

— 56, 5 De convenientiis fisci debtoribus.

— 56, 6 De fide et jure fisci, etc.

— 56, 8 De annonis et tributis.

— 56, 9 De conditis in publicis horreis.

— 56, 10 De collatione aeris et de retractionibus.

— 56, 11 De susceptori- (§ 1024)
bus . . . et arcariis.

— 56, 12 De collatione il- lustrium et de auri col- latione.

— 56, 14 De censibus . . . inspectoribus.

— 56, 18 De publicorum tributorum exactione, etc.

— 56, 20 De adjectionibus.

— 60, 52 De bonis dam- natorum.

HEXABIBLOS, 2, 5 De . . . vectigalibus, etc.

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SEE also supra “A”; § 1021; vol. ii, §§ 677, 691.

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C. Public domains and pro- perty.

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(§ 1024) (a) **Ante-Justinian:**

COD. THEOD. 4, 24 De aedificiis . . . publicis.
 — 10, 3 De locatione fundorum, etc.
 — 14, 14 De campo Martio urbis Romae.
 — 15, 2 De aquaeductu.
 — 15, 3 De itinere muniendo.
 NOV. MARJORIAN. 4 De aedificiis publicis.
 NOV. THEOD. 23 De locis rei publicae . . . possessis civitatibus, etc.

(b) **Justinian:**

DIG. 43, 7 De locis et itineribus.
 — 43, 8 Ne quid in loco publico vel itinere fiat.
 — 43, 9 De loco publico fruendo.
 — 43, 10 De via publica et itinere publico reficiendo.
 — 43, 12 De fluminibus. Ne quid in flumine publico ripave . . . fiat quo peius navigetur.
 — 43, 13 Ne quid in flumine publico fiat, etc.
 — 43, 14 Ut in flumine publico navigare liceat.
 — 43, 15 De ripa munienda.
 — 43, 16 De vi et vi armata.
 — 43, 17 Ut possidetis.
 — 43, 21 De rivis.

— 43, 22 De fonte.
 — 43, 23 De cloacis.
 CODE, 2, 16 Ut nemo privatus titulos praediis, etc.
 — 11, 43 (42) De aqueductu.
 — 11, 56 (55) Non licere metrocomiae habitatoribus loca sua ad extraneum transferre.
 — 11, 61 (60) De pascuis publicis, etc.
 — 11, 63 (62) De mancipiis et colonis, etc.
 — 11, 68 (67) De agricolis, etc.
 — 11, 71 (70) De locatione praediorum civilium, etc.
 — 11, 72 (71) De conductoribus . . . praediorum, etc.
 — 11, 73 (72) Quibus ad conductionem praediorum etc.
 — 11, 74 (73) De collatione fundorum, etc.
 — 11, 77 (76) De palatiis.
 — 12, 44 (45) De litorum et itinerum custodia.

(c) **Post-Justinian:**

BAS. 54, 37 De theatris, etc.
 — 55, 13 De diversis praediis . . . templorum et civitatum, etc.
 — 58, 8 De locis et itineribus publicis, eorumque fructu et refectione.

— 58, 16 *Ne quid in flumine publico ripave . . . fiat, quo peius navigetur, etc.*

— 58, 19 *De . . . aquae-ductis.*

— 58, 22 *De cloacis.*

II. Modern references:—

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OSSIG, *Röm. Wasserrecht*, Leipzig, 1898.

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III. See also supra "A" and infra "D"; supra § 995; vol. ii, §§ 560, 850.

D. The crown properties or (§ 1024) the Emperor's private domains and property.

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) *Ante-Justinian:*

COD. THEOD. 1, 11 *De officio comitis rei privatae.*

— 1, 17 *De officio rationalis summarum et rei pri-vatae.*

— 5, 12 *De fundis patri-monial., etc.*

— 5, 13 *De fundis rei saltibus divinae.*

— 5, 16 *De agricolis et mancipiis dominicis vel . . . rei privatae.*

— 6, 9 *De . . . comite sac-rarum largitionum et rerum privatae.*

— 6, 30 *De palatinis sac-rarum largitionum et rerum privatarum.*

— 7, 7 *De pascuis.*

— 10, 2 *De domibus ad rem privatum pertinent., etc.*

— 10, 3 *De locatione fun-dorum, etc.*

— 10, 4 *De actoribus . . . rei privatae.*

— 10, 5 *Qui conductores rei privatae, etc.*

— 10, 6 *De grege dominico.*

(§ 1024) — 10, 7 *De Caesarianis.*
 — 10, 9 *De incorporatione.*
 — 10, 25 *De privilegiis domus Augustae.*
 — 10, 26 *De conductoribus et hominibus domus Augustae.*
 — 11, 19 *De conlatione fundorum . . . rei privatae.*
 NOV. THEOD. 5 *De patrimonialibus rei dominicae.*
 — 19 *De rescind. vend. fundorum rei dominicae.*

(b) **Justinian:**

CODE, 1, 33 *De officio comitis rerum privatarum.*
 — 1, 34 *De officio comitis sacri patrimonii.*
 — 11, 61 (60) *De pascuis, etc.*
 — 11, 62 (61) *De fundis patrimonial., etc.*
 — 11, 64 (63) *De fugitivis colonis, etc.*
 — 11, 65 (64) *De collatione fundorum, etc.*
 CODE, 11 66 (65) *De fundis rei privatae et saltibus divinae domus.*
 — 11, 67 (66) *De fundis et saltibus rei dominicae.*
 — 11, 68 (67) *De agricolis et manciipiis, etc.*
 — 11, 69 (68) *De praediis tamiacis, etc.*
 — 11, 71 (70) *De locatione praediorum, etc.*

— 11, 72 (71) *De conductoribus . . . praediorum . . . domus Augustae.*
 — 11, 73 (72) *Quibus ad conductionem praediorum, etc.*
 — 11, 74 (73) *De collatione fundorum, etc.*
 — 11, 75 (74) *De privilegiis domus Augustae, etc.*
 — 11, 76 (75) *De grege dominico.*
 — 11, 77 (76) *De palatiis.*
 — 11, 78 (77) *De cupressis ex luco Daphnensi . . . non excidendis.*
 NOV. 52 *Ut non fiant pignorationes pro aliis personis, etc.*
 — 162 *Sacra forma transmissa dominico, etc.*

(c) **Post-Justinian:**

BAS. 6, 31 *De Palatinis et sanct. largitionum et rerum privatarum.*
 — 50, 13 . . . *Ne rei dominicae vindicatio temporis praescriptione submoveatur.*
 — 55, 10 *De collatione fundorum patrimonial., etc.*
 — 55, 14 *De cupressis ex luco Daphnensi . . . non excidendis, etc.*
 — 56, 15 *De fundis et saltibus dominicis et rei privatae.*

E. Mines and mining.**I. Texts of Roman law:—**

For English translations, see
supra §§ 945, 946, 948,
951, 952, 955.

(a) Ante-Justinian:

COD. THEOD. 1, 32 De procuratoribus . . . metallorum.
— 10, 19 De metallis et
metallariis.

(b) Justinian:

CODE, 11, 7 (6) De metallariis
et metallis, etc.

II. Modern references:—

BERGE, *Le régime légal des mines dans l'Afrique du Nord*, Paris, 1913.

CUQ, *Un règlement administratif sur l'exploitation des mines au temps d'Hadrien* (*Mélanges Gérardin*, pp. 87–134, Paris, 1907).

LABORDERIE, *Un contrat de travail dans les mines de Dacie au temps des Antonins*, 33 *Revue gén. du droit*, pp. 193–8.

MISPOULET, *Le régime des mines à l'époque romaine et au moyen-âge*, Paris, 1908.

F. The coinage.**I. Texts of Roman law:—**

For English translations, see
supra §§ 945, 946, 948,
951, 952, 955.

(b) Justinian:

(§ 1024)

CODE, 11, 11 (10) *De veteris numismatis potestate*.

EDICTA (in Appendix to Nov.), 11 *Ut nullam copiam . . . et monetariam apud Egyptios . . . sed instar magnae hujus urbis signatum illic aurum fiat*, etc.

(c) Post-Justinian:

BAS. 54, 18 *De veterum nummorum potestate*.

II. Modern references:—

HILL, *Historical Roman coins to reign of Augustus*, London.

SMITH, *Dictionary of Greek and Roman antiquities*³, vol. ii, “moneta”, and also “tables of weight” (pp. 1005–8).

III. See also supra § 1023; vol. ii, § 917.**G. Post-roads.****I. Texts of Roman law:—**

For English translations see
supra §§ 945, 946, 948,
951, 952, 955.

(a) Ante-Justinian:

COD. THEOD. 6, 31 *De stratoribus*.

— 8, 5 *De cursu publico, angariis*, etc.

(§1024) **COD. THEOD.** 8, 6 *De tractoriis et stativis.*

— 9, 30 *Quibus equorum usus concessus est aut denegatus.*

(b) **Justinian:**

DIG. 43, 10 *De via publica, etc.*

CODE, 12, 24 (25) *De stratoribus.*

— 12, 50 (51) *De cursu publico, anguariis, etc.*

— 12, 51 (52) *De tractoriis et stativis.*

(c) **Post-Justinian:**

BAS. 6, 30 *De curatoribus cursus.*

— 6, 32 *De stratoribus, etc.*

— 56, 17 *De cursu publico, angariis, etc.*

H. Public works.

I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

COD. THEOD. 15, 1 *De operibus publicis.*

(b) **Justinian:**

DIG. 50, 10 *De operibus publicis.*

CODE, 8 11 (12) *De operibus publicis.*

(c) **Post-Justinian:**

BAS. 54, 12 *De operibus publicis.*

— 58, 12 *De operibus publicis, etc.*

II. See also *supra* vol. ii, §913.

I. Public games.

I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

COD. THEOD. 15, 5 *De spectaculis.*

— 15, 6 *De Maiuma.*

— 15, 7 *De scaenicis.*

— 15, 9 *De expensis ludorum.*

— 15, 10 *De equis curulibus.*

— 15, 12 *De gladiatoribus.*

— 15, 13 *De usu sellarum.*

(b) **Justinian:**

CODE, 10, 54 (53) *De athletis.*

— 11, 41 (40) *De spectaculis, etc.*

— 11, 42 (41) *De expensis publicorum ludorum.*

— 11, 44 (43) *De gladiatoriis penitus tollendis.*

— 11, 46 (45) *Se Maiuma.*

(c) **Post-Justinian:**

BAS. 54, 38 *De expensis ludorum publicorum.*

J. Annona (food supply).**I. Texts of Roman law:—**

For English translations, see
supra §§ 945, 946, 948, 951,
952, 955.

(a) Ante-Justinian:

PAULUS, *Sent.* 1, 20a.

COD. THEOD. 7, 4 *De erga-
tionis militaris annonae.*

— 7, 5 *De excoctione et
translatione annonarum.*

— 11, 1 *De annonae.*

— 14, 15 *De canone frumen-
tario urbis Romae.*

— 14, 16 *De frumento urbis
Constantinop.*

— 14, 19 *De pretio panis
Ostiensis.*

— 14, 20 *De pretio piscis.*

— 14, 24 *De mensis cleariis.*

— 14, 25 *De frumento Kar-
thaginiensi.*

— 14, 26 *De frumento
Alexandrino.*

(b) Justinian:

DIG. 48, 12 *De lege Julia de
annonae.*

CODE, 1, 44 *De officio praefecti
annonae.*

— 1, 52 *De annonis, etc.*

— 10, 16 *De annonae, etc.*

— 11, 23 (22) *De canone
frumentario urbis Romanae.*

— 11, 24 (23) *De frumen-
tario urbis Constantinop.*

— 11, 25 (24) *De annonis
civilibus.*

— 28 (27) *De frumento (§ 1024)*
Alexandrino.

— 12, 38 (39) *De excoctione
et translatione annonarum.*

— 12, 39 (40) *De militari
veste.*

Nov. 41 *Lex ut bonis.*

(c) Post-Justinian:

BAS. 54, 24 *De canone fru-
mentario urbis Romae.*

— 54, 25 *De frumento Con-
stantinop.*

— 54, 26 *De annonis civili-
bus.*

— 56, 8 *De annonis, etc.*

— 57, 4 *De annonae mili-
tari, etc.*

— 60, 44 *De lege Julia de
annonae.*

**II. See also infra "K"; supra
vol. ii, §§ 898, 932.****K. Trade and commerce.****I. Texts of Roman law:—**

For English translations, see
supra §§ 945, 946, 948, 951,
952, 955.

(a) Ante-Justinian:

COD. THEOD. 10, 20 *De mu-
rilegulis, etc.*

— 10, 21 *De vestibus, etc.*

— 10, 22 *De fabricensibus.*

— 10, 23 *De classicis.*

— 13, 5 *De naviculariis.*

— 13, 6 *De praediis navi-
culariorum.*

(§ 1024) COD. THEOD. 13, 7 De navibus non excusandis. — 11, 4 (3) De navibus non excusandis.

— 13, 8 Ne quid oneri publico imponatur. — 11, 5 (4) Ne quid oneri publico imponatur.

— 13, 9 De naufragiis. — 11, 6 (5) De naufragiis.

— 14, 21 De nautis Tiberinis. — 11, 8 (7) De murilegulis, etc.

— 14, 22 De saccariis Portus Romae. — 11, 10 (9) De fabricensibus.

NOV. MARJORIAN. 8 De redito jure armorum. — 11, 16 (15) De pistoribus.

NOV. THEOD. 8 De navibus ultra duorum milium modiorum capacitatem non excusandis. — 11, 17 (16) De suariis.

NOV. VALENTINIAN. 24 De negotiatoribus. — 11, 26 (25) De mendicantibus. validis.

— 29 De naviculariis amnicis. — 11, 27 (26) De nautis Tiberinis.

— 34 De praediis pistoriis, etc. Nov. 43 De ergasteriis Constantinop., etc.

(b) **Justinian:**

DIG. 50, 11 De nundinis. — 85 De armis.

CODE, 4, 41 Quae res exportari non debeant. — 122 Edictum de constitutione artificum.

— 4, 55 Si servus exportandus veneat.

— 4, 59 De monopoliiis, etc.

— 4, 60 De nundinis.

— 4, 63 De commerciis et mercatoribus.

— 6, 62 De hereditatibus . . . naviculariorum, etc.

— 11, 2 (1) De naviculariis, etc.

— 11, 3 (2) De praediis naviculariorum.

(c) **Post-Justinian:**

BAS. 6, 34 De equitis dignitate, etc.

— 19, 7 De servis exportandis, etc.

— 19, 18 De monopoliiis, etc.

— 53, 6 De pectoribus, etc.

— 53, 7 De emtione et venditione vini.

— 54, 16 De purpura Imperatoris, etc.

— 54, 17 De fabricensibus.

— 54, 20 De suariis, etc.

— 54, 27 De mercantibus validis.

BAS. 57, 9 *De armis eorum confectione, etc.*

— 59, 4 *De officinis Constantinop., etc.*

II. *See also* supra "J"; §1010.

L. Sumptuary laws.

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

COD. THEOD. 14, 10 *De habitu, qui uti oportet intra urbem.*

(b) **Justinian:**

CODE, 11, 9 (8) *De vestibus holoveris et curatis, etc.*

— 11, 12 (11) *Nulli licere in frenis et equitibus sellis et in balteas margaritas, etc.*

M. Education.

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

COD. THEOD. 6, 13 *De comitibus et tribunis scholarum.*

Military law: references.

§ 1025

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

— 6, 21 *De professoribus, qui in urbe Constantinop. docentes ex lege, etc.*

— 13, 3 *De medicis et professoribus.*

— 14, 9 *De studiis liberalibus urbis Romae et Constantinop.*

Nov. THEOD. 21 *De scholari- bus, etc.*

(b) **Justinian:**

CODE, 10, 53 (52) *De pro- fessoribus et medicis.*

— 11, 19 (18) *De studiis liberalibus urbis Romae et Constantinop.*

— 12, 11 *De comitibus et tribunis scholarum.*

— 12, 29 (30) *De privilegiis scholarum.*

(c) **Post-Justinian:**

BAS. 6, 26 *De . . . profes- soribus.*

II. *See also* supra § 954; vol. i, §§ 154–65.

N. Libraries.

WILLEMS, *Droit public romain*,⁷ p. 448.

(a) **Ante-Justinian:**

PAUL. Sent. 5, 31 *De poenis militum.*

(§1025) **COD. THEOD.** 1, 14 *De officio praefect. Augustalis.*
 — 5, 6 *De bonis militum.*
 — 6, 6 *De . . . magistris militum, etc.*
 — 6, 7 *De . . . magistris militum, etc.*
 — 6, 14 *De comitibus rei militaris.*
 — 6, 25 *De praepositis labarum.*
 — 6, 33 *De decanis.*
 — 6, 34 *De mensionibus.*
 — 6, 35 *De privilegiis eorum qui in sacro palatio militarunt.*
 — 6, 36 *De castrensi . . . palatinorum peculio.*
 — 7, 1 *De re militari.*
 — 7, 2 *Quid . . . ad militiam, etc.*
 — 7, 3 *Quis in gradu praeferatur.*
 — 7, 4 *De . . . militaris annonae.*
 — 7, 5 *De . . . translatione annonarum.*
 — 7, 6 *De militari veste.*
 — 7, 8 *De metatis.*
 — 7, 9 *De satgamo hospitibus, etc.*
 — 7, 10 *Ne quis in palatiis maneat.*
 — 7, 11 *Ne comitibus et tribunis lavacra, etc.*
 — 7, 12 *De commeatu.*
 — 7, 13 *De tironibus.*
 — 7, 14 *De burgariis.*
 — 7, 15 *De terris limitaneis.*
 — 7, 16 *De litorum et itinerum custodia.*
 — 7, 17 *De lusoriis danuvii.*
 — 7, 18 *De desertoribus et occultatoribus eorum.*
 — 7, 19 *De saturianis . . . et occultatoribus eorum.*
 — 7, 20 *De veteranis.*
 — 7, 21 *De testimonial. extratribunis, etc.*
 — 7, 22 *De filiis militarium . . . et veteranorum.*
 — 7, 23 *De oblatione equorum.*
 — 7, 24 *De oblatione votorum.*
 — 8, 4 *De cohortal., etc.*
 — 11, 18 *Qui a praebitione tironum et equorum excusentur.*
 — 11, 25 *De quadrimenstruis brevibus.*
 — 12, 15 *De centurionibus.*
 — 14, 11 *Quibus militibus ad urbem non liceat accedere.*
 — 15, 3 *De itinere muniendo.*
 — 15, 15 *Quibus armorum usus interdictus est.*
Nov. MARJORIAN. 8 *De redditu jure armorum.*
Nov. THEOD. 4 *Duciani, etc.*
 — 7 *De amota militaribus forci praescriptione.*
 — 24 *De ambitu et locis limitaneis, etc.*
 — 25 *De metatis.*

Nov. VALENTINIAN. 5 De pantapolis ad urbem Romam, etc.

— 6 De tironibus et occultatoribus eorum.

— 9 De reddito jure armorum.

— 20 De corporatis urbis Romae qui ad militiam, etc.

(b) **Justinian:**

INST. 2, 11 De militari testamento.

DIG. 37, 13 De . . . testamento militis.

— 38, 12 De veteranorum et militum successione.

— 43, 15 De ripa munienda.

— 49, 16 De re militari.

— 49, 18 De veteranis.

CODE, 1, 29 De officio magistri militum.

— 1, 46 De officio judicium militarium.

— 1, 47 Ne comitibus rei militaris, etc.

— 1, 48 Ut . . . militares judices, etc.

— 2, 51 (52) De restitutione militum qui rei publicae causa afuerunt.

— 3, 25 In quibus causis militantes fore praescriptione uti non possunt.

— 5, 65 De excusatione veteranorum.

— 10, 55 (54) De his qui non implendis stipendiis, etc.

— 10, 56 (55) Quibus mun- (\$1025) eribus excusantur ii, qui post impletam militam, etc.

— 11, 13 (12) De classicis.

— 11, 47 (46) Ut armorum usus inscio principe interdictus sit.

— 11, 60 (59) De fundis, etc.

— 12, 12 De comitibus rei militaris.

— 12, 18 De praepositis labarum.

— 12, 28 (29) De privilegiis eorum qui in sacro palatio militant.

— 12, 30 (31) De castrensi . . . palatinorum peculio.

— 12, 33 (34) Qui militare possunt vel non, etc.

— 12, 34 (35) Negotiatores ne militent.

— 12, 35 (36) De re militari.

— 12, 36 (37) De castrensi peculio militum, etc.

— 12, 37 (38) De . . . militaris annonae.

— 12, 38 (39) De . . . translatione militarium annonarum.

— 12, 39 (40) De militari veste.

— 12, 40 (41) De metatis.

— 12, 41 (42) De salgamo hospitibus, etc.

— 12, 42 (43) De commeatu.

— 12, 43 (44) De tironibus.

(§1025) **CODE**, 12, 44 (45) *De litorum et itinerum custodia.*
 — 12, 45 (46) *De desertoribus et occultatoribus eorum.*
 — 12, 46 (47) *De veteranis.*
 — 12, 47 (48) *De filiis militarium, etc.*
 — 12, 48 (49) *De oblatione votorum.*
 — 12, 49 (50) *De . . . exceptoribus . . . judicium . . . militarium.*
 — 12, 57 (58) *De cohortal., etc.*
 Nov. 85 *De armis.*
 — 116 *Ut neque miles, etc.*
 — 130 *Quomodo oporteat milites transitum in civitatibus facere et de introitu.*

(c) **Post-Justinian:**

THEOPHILUS, 2, 11 *De militari testamento.*
ECLOGA, 16 *De . . . castrenibus militum, etc.*
 — 18 *De partione spoliorum.*
PROCHIRON, 40 *De partione spoliorum.*
BAS. 6, 33 *De . . . privilegiis eorum qui in sacro palatio militant.*
 — 6, 35 *De . . . exceptoribus . . . judicium . . . militarium.*
 — 10, 33 *De restitutione militum et eorum, qui rei publicae absunt.*

BAS. 25, 6 *Quomodo . . . militiae pignori, etc.*
 — 35, 21 *De testamento militis.*
 — 55, 6 *De fundis, etc.*
 — 56, 16 *De militari veste.*
 — 57, 1 *De re militari et de fugitivis, etc.*
 — 57, 2 *De castrenibus peculiis.*
 — 57, 3 *De restitutione militiae.*
 — 57, 5 *De metatis, etc.*
 — 57, 6 *De veteranis, etc.*
 — 57, 7 *De filiis officialium, etc.*
 — 57, 8 *De militibus, etc.*
 — 57, 9 *De armis eorumque confectione et ne liceat arma facere et a privatis ea emere.*

HEXABIBLOS, 1, 16 *De militibus.*
 — 6, 8 *De transfugis, etc.*

II. Modern references:—

BRAY, *Essai sur le droit pénal militaire des romains*, Paris, 1894.

BRISSAUD (Garner, transl.), *Hist. of French public law*, (vol. ix, *Continental Legal Hist. Series*, p. 33, Boston, 1915).

MARQUARDT, *Röm. Staatsverwaltung*, Leipzig, 1881-5.

MARQUARDT (French translation by BRISSAUD), *De l'organisation militaire chez les romains*, Paris, 1891.

MOMMSEN, *Röm. Staatsrecht*³, Leipzig, 1887–8. (Book iii on war.)

— (French transl. by GIRARD), *Droit public* roman, vol. vii, pp. 275–322.¹

SMITH, *Dictionary of Greek and Roman antiquities*³, vol. i, "exercitus."

WILLEMS, *Droit public romain*⁷, pp. 557 et seq.

III. *See also* supra §§ 1020–23; vol. ii, §§ 915, 940.

Ecclesiastical law: references.

§ 1026

I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) Ante-Justinian:

XII TABLES, x; xii, 1.

PAUL. Sent. 1, 21 *De sepulchris.*

COD. THEOD. 1, 27 *De episcopali definitione.*

— 5, 3 *De clericorum et monachorum.*

— 9, 25 *De raptu vel matrimonio sanctimonialium virginum, etc.*

— 9, 45 *De his qui ad ecclesias confugiunt.*

— 15, 4 *De imaginibus imperialibus.*

— 15, 5 *De spectaculis.*

— 15, 7 *De scaenicis.*

— 16, 1 *De fide catholica.*

— 16, 2 *De episcopis, ecclesiis et clericis.*

— 16, 3 *De monachis.*

— 16, 4 *De his qui super religione contendunt.*

— 16, 5 *De haereticis.*

— 16, 6 *Ne sanctum baptisma iteretur.*

— 16, 7 *De apostatis.*

— 16, 8 *De Judaeis, caelicolis et Samaritanis.*

— 16, 9 *Ne Christianum mancipium Judaeus habeat.*

— 16, 10 *De paganis, sacrificiis et templis.*

— 16, 11 *De religione.*

CONST. SIRMONDIAN. (in appendix to COD. THEOD.), 1–4, 6–16.

NOV. MARJORIAN. 6 *De sanctimonialibus vel viduis, etc.*

— 10 *Neque . . . ecclesiam, etc.*

— 11 *De episcopali judicio, etc.*

NOV. THEOD. 3 *De Judaeis, Samaritanis, haereticis et paganis.*

¹ SHERMAN, Charles P., *The modernness of Roman military law* (Wig-

(§1026) NOV. VALENTINIAN. 3 De succession. curial. qui ad clericatum transierunt.

— 10 Neque . . . ecclesiam, etc.

— 17 De episcoporum ordinatione.

— 18 De Manichaeis.

— 35 De episcopali judicio, etc.

(b) **Justinian:**

DIG. 11, 7 De religiosis, etc.

— 11, 8 De mortuo . . . et sepulchro, etc.

— 43, 6 Ne quid in loco sacro fiat.

— 50, 12 De pollicitationibus.

CODE, 1, 1 De summa trinitate et de fide catholica.

— 1, 2 De sacrosanct. ecclesiis et . . . privilegiis earum.

— 1, 3 De episcopis et clericis et orphanotrophis, etc.

— 1, 4 De episcopali auctoritate, etc.

— 1, 5 De haereticis et Manichaeis et Samaritis.

— 1, 6 Ne sanctum baptisma iteretur.

— 1, 7 De apostatis.

— 1, 8 Nemini licere signum salvatoris Christi vel in silice vel in marmore aut sculpere aut pingere.

— 1, 9 De Judaeis et caelicolis.

— 1, 10 Ne Christianum mancipium haereticus vel paganus vel Judaeus habeat, etc.

— 1, 11 De paganis sacrificiis et templis.

— 1, 12 De his qui ad ecclesias confugint, etc.

— 1, 13 De his qui in ecclesiis manumittentur.

— 3, 43 De aleae lusu et aleatoribus.

Nov. 3 Ut determinatus sit numerus clericorum sanct. majoris ecclesiae et ceterarum sanct. ecclesiarum Constantinop.

— 5 De monachis.

— 6 Quomodo oporteat episcopos et reliquos clericos ad ordinationem deduci, etc.

— 7 De non alienandis aut permutandis ecclesiasticis rebus . . . aut in . . . hypothecam dandis, etc.

— 9 Ut ecclesia Romana centum annorum habeat praescriptionem.

— 11 De privilegiis archiepiscopi primae Justinianae.

— 16 De mensura ordinandorum clericorum.

— 37 De Africana ecclesia.

— 40 Ut ecclesia sanctae resurrectionis possit alienare habitacula, etc.

- 42 De depositione Anthimi, etc.
- 43 . . . Ut mille centum ergasteria majoris ecclesiae (Constantinop.) excusentur, etc.
- 45 Ut haeretici curiales et munia impleant, etc.
- 46 De ecclesiasticarum immobilium rerum alienatione et solutione.
- 54 Constitutionem quae ex adscripticio et liberanatos esse liberos vult, etc.
- 55 Ut de cetero commutatione ecclesiasticarum rerum, etc.
- 56 Ut ea quae vocantur insinuativa super clericis, etc.
- Ut clerici, . . . et ut si quis aedificans ecclesiam . . . probatione sanctissimi patriarchae, etc.
- 58 Ut in privatis dominibus sacra mysteria non fiant.
- 59 De expensis quae sunt circa defunctorum exequias.
- 65 De alienatione rerum ecclesiae Mysiae relictarum pro captivorum redemtione, etc.
- 67 Ut nullus fabricet oratorii domum praeter voluntatem episcopi, etc.
- 76 Haec constitutio interpretatur prior const. de his qui ingrediuntur in monasterium et de substantiis eorum, etc.
- 77 Ut . . . neque blasphematur in Deum.
- 79 Apud quas oporteat causam dicere monachos et ascetrias.
- 81 Constitutio quae dignitatibus et episcopatu liberat filium patria potestate.
- 83 Ut clerici apud proprios episcopos primum convenientur et post haec apud civiles judices.
- 86 Ut differentes judices audire interpellantium allegationes cogantur ab episcopis hoc agere, etc.
- 109 De privilegiis dotis haereticis mulieribus non praestandis.
- 111 Haec constitutio innovat const. quae praescriptionem centum annorum locis venerabilibus dederat.
- 120 De alienatione emphyteosi et locatione et hypothecis . . . rerum sacrarum.
- 123 De sanctissimis . . . episcopis et clericis et monachis.
- 129 De Samaritis.
- 132 De interdictis collectis haereticorum.

(§1026) Nov. 133 Quomodo oportet monachos vivere.
 — 137 De creatione episcoporum et clericorum.
 — 144 De Samaritis.
 — 146 Ut liceat Hebrais, etc.
 — 149 Ut praesides provinciarum gratis fiant ex supplicatione deo carissimorum episcoporum, etc.

CONST. DISPERSAE (in second appendix to Nov.), 2-3 Jusso Justiniani imperatoris pro privilegio concilii Byzaceni.

EDICTA (in first appendix to Nov.), 1.
 — 2 Ne praesides in fiscalibus asyli jus dent.
 — 12 De Hellesponto.

(c) **Post-Justinian:**

PROCHIRON, 24 De testamento episcoporum, etc.
 — 28 De ordinatione episcoporum et presbyterorum.

EPANAGOGA, 3 De patriarcha.
 — 8 De episcopo ejusque ordinatione et nominatione.
 — 9 De episcopis et presbyteris, etc.

Bas. 1, 1 De summa trinitate et fide catholica, etc.
 — 3, 1 De episcopis et clericis, et ordinatione et privilegiis eorum.

— 3, 2 De numero clericorum magnae ecclesiae Constantinop. definiendo.
 — 3, 3 De clericis ex una ecclesia in alteram transferendis, etc.
 — 3, 4 De clericis, qui a sua ecclesia discedunt, etc.
 — 4, 1 De monasteriis et monachis et ascetis, etc.
 — 5, 1 De ecclesiis et monasteriis, etc.
 — 5, 2 De alienatione et emphyteusi rerum ecclesiasticarum.
 — 5, 3 De ecclesiasticis canonibus et privilegiis eorum.
 — 6, 22 Ut praesides interpellantis jura audire cunctantes ab episcopis id facere cogantur, etc.
 — 31, 5 Constitutio, quae per dignitates et episcopatum filios patria potestate liberat.
 — 58, 15 Ne quid in loco sacro fiat.
 — 59, 1 De monumentis et sumtu funerum.
 — 59, 3 De funere et sumtibus funerum.
 — 59, 4 . . . Ut mille et centum officinae magnae ecclesiae (Constantinop.) . . . excusentur, etc.
 — 60, 58 De raptore virginum . . . sanctimonialium.

HEXABIBLOS, 2, 5 De muneribus, etc.
 — 2, 9 De iis qui confugium quaerunt.
 — 4, 5 De civile matrimonii rigore.
 — 5, 4 De testamento episcoporum et monachorum.
 — 6, 11 De Judaeis, paganizantibus et haereticis.
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III. See also supra § 1023;
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PART II

BIBLIOGRAPHY OF ROMAN LAW

PART II

BIBLIOGRAPHY OF ROMAN LAW

List of Roman law treatises; books containing texts of § 1027 Roman law. This is a list of the principal works (mostly modern) — treatises and texts — on Roman law. Although care has been exercised to give the latest editions of the books listed, it is not claimed that the editions given are always the latest. For magazine articles on Roman law and also for books incidentally treating of Roman law, see supra §§ 941–1026.¹

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VOLUME III

APPENDIX I

HOW THE CORPUS JURIS CIVILIS
OF JUSTINIAN IS CITED

Abbreviations for the Code, Digest, Institutes, and Novels. The medieval and modern abbreviations “C.” “Cod.” “Code,” refer to the Code; “D.” “Dig.” “P.” refer to the

Digest or Pandects: "I.," "Inst.," to the Institutes; and "N.," "Nov.," to the Novels.⁶¹⁸ The Novels are cited by the number, chapter, and section: for instance "Novel 118, 3, 1, or § 1."

The abbreviations "l." or "L." stand for "law" (lex) or "constitution," and refer to a law of some title in the *Code or Digest*: For instance "Code, 1, 4, 23" = Code, book 1, title 4, law 23; "Dig. 1, 3, 13" = Digest, book 1, title 3, law or fragment 13. The abbreviation "fr." stands for fragment, and refers to a fragment or law of some title in the Digest: For instance "Dig. 1, 3, 18" = Digest, book 1, title 3, fragment 18.

The abbreviation "§" refers either to some section of a title in the Institutes, or to some section of a law or fragment in the Code, Digest, and Novels:⁶¹⁹ For instance "Inst. 2, 7, § 1" = Institutes, book 2, title 7, section 1; "Dig. 1, 3, 32, § 3" = Digest, book 1, title 3, fragment 32, section 3.

The abbreviation "pr." means "principium," and refers either to the first sentence preceding the first section of a title in the Institutes, or to the first sentence preceding the first fragment of a title in the Digest: an illustration is "Dig. 1, 3, 32, pr."

The modern mode of citing the Corpus Juris. To the historian Gibbon, whose most brilliant chapter forty-four of his "Decline and Fall of the Roman Empire" was for years a Roman law text-book at continental European universities, is due the credit and honor of shaking off the pedantic yoke of citation as established by the medieval civilians. Gibbon "dared to adopt the simple and rational method of numbering the book, the title, and the law cited."⁶²⁰ His example was followed by Hugo and other modern civilians until it is now the universal practice to cite the Corpus Juris as part such and such, such and such a numbered book, title, and law, frag-

⁶¹⁸ On the entire subject of abbreviations and modes of citation of the Corpus Juris, see Hunter, *Roman law*,⁴ p. xi; Sohm (Ledlie⁵) *Roman law*, pp. 16-17; Girard, *Manuel de droit romain*,⁶ pp. ix-x; Mackenzie, *Roman law*,⁷ p. 32.

⁶¹⁹ The use of the section abbreviation is very frequently omitted,—see illustrations in the text.

⁶²⁰ "Decline and fall, etc.," vol. 4, ch. 44, note 1.

ment, or section. For instance "Dig. 50, 17, 1" means Digest, book 50, title 17, fragment 1.

There are these slight differences in the mode of citation between the Anglo-American and German practice: (1) The **German usage** is to start first with the law, fragment, or section—which is just the opposite of the **Anglo-American usage**. The **French usage** is like the Anglo-American. To illustrate: "Dig. 17, 1, 2, pr." (Anglo-American and French mode of citation) would be cited by German writers "L. 2, pr. D. 17, 1"; "Code, 4, 34, 11, 1" (Anglo-American and French mode of citation) would be cited by German writers "L. 11, § 1, C. 4, 34"; "Inst. 2, 7, pr." (Anglo-American and French mode of citation) would be cited by German writers "pr. I, 2, 7."

(2) Sometimes the German usage as to citing the particular part of the Corpus Juris (Code, Dig., etc.) is to add the title right after the part and put the numbers of the book and title in brackets—for instance⁶²¹ "pr. I. de donat. (2, 7)."

The medieval mode of citing the Corpus Juris. The medieval way of citing the Corpus Juris is as follows: a citation begins with a numbered law, fragment or section, followed by mention of the part of the Corpus Juris to which the law, fragment, or section belongs, and the citation ends by giving the title wherein the law, etc., will be found; but the book of which this title forms a part is not given at all. For instance "l. 8. C. de praescript. long. temporis" is an illustration of the medieval mode of citation.

To find the book to which a title cited belongs and to convert the medieval mode of citation into the modern, search the Index of Titles as given in the front of volumes I-II of Krueger and Mommsen's edition of the Corpus Juris to locate the title cited: the index of titles should disclose the number of the book of the Code, Digest or Institute to which the title belongs. For instance "l. 8. C. de praescript. long. temporis" = Code, 7, 33, 8; 1. 38, § 1. D. ad leg. Jul. de adulteriis" = Digest, 48, 5, 38, 1. There are several thousand

⁶²¹ See Sohm (Ledlie⁸), *Roman law*, p. 16.

titles in the *Corpus Juris*. Brissonius,⁶²² whose Civil Law dictionary published in the 16th century is still to-day the best on Roman law, employs the medieval mode of citation.

⁶²² The French jurist Brisson, died 1591, was the Advocate-General of Henry III, and was murdered by the League party: Culquhoun, *Roman law*, § 175.

VOLUME III

APPENDIX II

HOW THE MEDIEVAL CORPUS JURIS CANONICI IS CITED

The Corpus Juris Canonici. One of the great although indirect results of the Bologna revival of Roman law study was the full maturing of the Western Roman Canon Law, which in the 12th century had become largely codified,—the complete codification receiving the name of *Corpus Juris Canonici*. This code of the Latin Church was the supreme ecclesiastical law of **all Western Europe**, in force long before

the 16th century Protestant Reformation divided the Roman Church and Western Christendom.

The Corpus Juris Canonici is a counterpart of the Justinian codification as to name. The appellation "Corpus Juris Canonici" to denote the law of the Western Roman church was officially sanctioned in the 16th century by Gregory XIII.⁸ But this expression was in common use much earlier; and from the middle of the 13th century it was employed⁹ in sharp contradistinction to the Roman law, collectively described as the *Corpus Juris Civilis*.¹⁰

The Corpus Juris Canonici is a counterpart of the Justinian codification as to form. Parts of the Corpus Juris Canonici. In imitation of Justinian's monumental work, the *Corpus Juris Canonici* is arranged in four parts: Decree, Decretals, Extravagantes, and Institutes, which is their chronological order.

1. **The 12th century Decree (Decretum Gratiani).** This part of the *Corpus Juris Canonici* corresponds to the Digest of Justinian. It was prepared and published by Gratian, a Benedictine monk of Bologna, and embraces all the previous law of the Church prior to 1140 contained in acts of councils, decrees of Popes, and earlier compilations of ecclesiastical law.¹¹

2. **The 13th and 14th century Decretals (Decretales).** This part of the *Corpus Juris Canonici* corresponds to the Code

⁸ July 1, 1580, in "Cum pro munere." See 4 *Cath. Encycl.*, p. 391, New York, 1907-14.

⁹ Gratian's *Decretum* was already called "Corpus Juris Canonici," by a 12th century Glossator; and in the next century Innocent IV, in 1253, calls by this name the *Decretals* of Gregory IX. See 4 *Cath. Encycl.*, p. 391.

¹⁰ This term was definitely used by Godefroy in the 16th century.

¹¹ **Gratian's Decretum** is divided into three parts, which are cited as follows:

(a) **Part I—Distinctiones.** Is cited by the number of *Distinction*, and initial words or number of *canon* (frequently the reverse order, beginning with *canon*, is used): e.g. "Exemplo Danielis, c. 11, D. 37."

(b) **Part II—Causae.** Is cited (except *Causa* 33, *quaestio* 3) by *Causa*, *quaestio*, and *canon* (frequently the reverse order, beginning with

of Justinian. It consists of the statutes or decretals of Popes Gregory IX,¹² Boniface VIII,¹³ and Clement V.¹⁴

3. **The 14th and 15th century Extravagantes.** This part of the Corpus Juris Canonici corresponds to the Novels of Justinian. It consists of the decretals of Popes John XXII,¹⁵ and others from Urban VI to Sixtus IV.¹⁶

4. **The 16th century Institutes.** This is virtually a fourth part of the Corpus Juris Canonici, and corresponds to the Institutes of Justinian. To complete the grand canonical codification, Pope Paul IV¹⁷ ordered the renowned canonist **Lancelot**¹⁸ to prepare Institutes of Canon Law; Lancelot's elementary treatise¹⁹ published in **1563** forms a part of many

canon, is used) : e.g. "Non denegetur, c. 20, C. 2 (=causa 2), qu. 6." But Causa 33, *quaestio* 3 is cited like Part I, with addition of the words "de poenitentia" after the *Distinction*: e.g. "Dixi confitebor, c. 4, D. 1 de poenit."

(c) Part III—**De consecratione.** Is cited like Part I, with addition of the words "de consecratione" after the *Distinction*: e.g. "Per orbem, c. 26, D. 3 de consecrat."

¹² "Quinque Libri Decretalium Gregorii Noni" or "**Liber Extra**," 1234. Are cited by *original name* of Liber Extra (abbreviated to *X*), *book*, *title*, and *chapter* (frequently the *chapter* comes first) : e.g. "chap. 9, X., lib. iv, tit. 13."

¹³ "**Liber Sextus Decretalium**," 1294. Are cited by *original name* of Liber Sextus (abbreviated to *in Sext.* or *VI*), *book*, *title*, and *chapter* (frequently the *chapter* comes first) : e.g. "cap. 1, in Sext., lib. i, tit. 2 de constitutionibus."

¹⁴ "Clementis vel Clementinae Constitutiones" or "**Liber Septimus Decretalium**," 1313. Are cited by *original name* of Liber Septimus (abbreviated to *in Sept.* or *VII*) or by *later name* of *Clementinae*, *book*, *title*, and *chapter* (frequently the *chapter* comes first) : e.g. "cap. 1, in Sept. (or Clement.), lib. i, tit. 1 de summa trinitate."

¹⁵ "**Extravagantes Johannis XXII**," 1340. Are cited by *name* abbreviated to *Extr.* or *Xvag.*), *title* and *chapter* (frequently the *chapter* comes first) : e.g. "cap. 1, Extr. (or Xvag.), Jo. XXII, 12."

¹⁶ "**Extravagantes Communes**," 1483. Are cited by *name*, *book*, *title*, and *chapter* (frequently the *chapter* comes first) : e.g. "cap. 2, Extr. (or Xvag.) Comm. iii, 2."

¹⁷ Died 1559.

¹⁸ Giovanni Paolo Lancelotti (1522-90).

¹⁹ It is cited by *book*, *title*, and *paragraph*.

editions of the *Corpus Juris Canonici*, although never having received official approval.²⁰ It is a very clear résumé of Canon Law, and its divisions have been broadly followed by all subsequent authors of elementary works on Canon Law. Lancelot had the great misfortune to publish his *Institutes* just before the Council of Trent: but the decrees of that council have been followed by subsequent editors of his work in their notes and commentaries.

²⁰ Morey's statement that it was published at Rome under Gregory XIII is not authentic, see 8 *Cath. Encycl.*, p. 774.



